

Las Siete Partidas



VOLUME THREE

**MEDIEVAL LAW:
LAWYERS
AND THEIR WORK**

TRANSLATED BY Samuel Parsons Scott
EDITED BY Robert I. Burns, S.J.

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Medieval Law

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VOLUME 3: MEDIEVAL LAW

Lawyers and Their Work

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PENN

University of Pennsylvania Press

Philadelphia

Publication of this volume was assisted by a grant from the Program for Cultural
Cooperation between Spain's Ministry of Education and Culture and United
States Universities

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Printed in the United States of America on acid-free paper

10 9 8 7 6 5 4 3 2 1

Published by
University of Pennsylvania Press
Philadelphia, Pennsylvania 19104-4011

Library of Congress Cataloging-in-Publication Data

Las Siete partidas / translation and notes by Samuel Parsons Scott ; edited by Robert I. Burns.

p. cm. — (The Middle Ages series)

Includes bibliographical references and index.

Contents: v. 1. The medieval church — v. 2. Medieval government — v. 3. Medieval law — v. 4. Family,
commerce, and the sea — v. 5. Underworlds.

ISBN 0-8122-1738-1 (v. 1 : pkb. : alk. paper). — ISBN 0-8122-1739-X (v. 2 : pbk. : alk. paper) —

ISBN 0-8122-1740-3 (v. 3 : pbk. alk. paper). — ISBN 0-8122-1741-1 (v. 4 : pbk. : alk. paper) —

ISBN 0-8122-1742-X (v. 5 : pbk. : alk. paper)

1. Law—Spain—Sources. 2. Law, Medieval. 3. Siete partidas. I. Scott, S. P. (Samuel Parsons), 1846–
1929. II. Burns, Robert Ignatius. III. Alfonso X, King of Castile and Leon, 1221–1284. IV. Series.

KKT142 2000

340.5'5'0946—dc21

00-060738

CONTENTS

Introduction to the Third <i>Partida</i>	ix
Overview	ix
How a Trial Works	xi
Plaintiff, Defendant, Judge	xii
Lawyers: Proctor/Attorney and Advocate/Jurist	xiv
Summons, Charge and Countercharge, Oaths	xvi
Interrogatories, Witnesses	xvii
Inquisition: <i>Pesquisa</i>	xviii
Documentary Evidence and the Formulary	xx
Notaries, Seals, Judgments, Appeals	xxii
Property Law and Ownership	xxiv
Prescription, Easements, Usufruct	xxvi
Praxis: A Contemporary Trial	xxvii
The Monkey Trial: Montcada Versus Urgel	xxxi
Suggestions for Reading	xxxii
 <i>Partida</i> III: Analytical Table of Contents	 xxxv
 <i>Partida</i> III: Text in Translation	 533

INTRODUCTION TO THE THIRD PARTIDA

In systematic fashion, Alfonso had begun his legal summa by treating first of godly governance and religion, and then of temporal governance and defense of the realm. Having disposed of those cosmic verities, it made sense to anchor the rest of his code on a thorough exposition of the mechanics of the law, an account of how the legal system of courts and lawyers actually works. This third *partida* therefore deals with justice—its dispensation, decisions, and lawsuits. It is the longest of all seven *partidas* at 343 densely printed pages, nearly 100 more pages than its closest rival. A considerable book in its own right, it breaks down into 32 titles or chapters and 666 laws or essays. It does not encompass all laws; domestic law appears in the fourth *partida*, for instance, maritime law in the fifth, testamentary law in the sixth, and criminal law in the seventh. Canon law is the basis for the first *partida* and much international law for the second. But the present *partida* does cover most of the procedural commonalities. The last fifty pages form a coda on property in its widest sense, including ownership, possession, prescriptive rights, and encumbrances.

Alfonso underlines the importance of this *partida* when he asserts that rulers must be attentively careful especially in two situations: about the army in wartime and about “law and legal rights” in peacetime. This accords with the traditional medieval picture of a king as preeminently warrior and fount of justice. And nothing is more central to justice than procedure or the mechanics of the judicial system, by which due process of law is guaranteed. By its nature, procedure is less attractive to the common reader and more fascinating to lawyers. Alfonso’s procedural law, however, shares with the other *partidas* many small surprises in social history. And it powerfully illumines the medieval mind.

OVERVIEW

The third *partida* belongs to the genre of *ordines iudicarii*, utilitarian “how-to” books, elaborated as professionalized law increasingly displaced more informal modes. Alfonso, or rather the notable jurists who confected this *partida* under his guidance, would have been familiar with the many contemporary works on that topic. The genre culminated in the encyclopedic summa on procedure by the Provençal jurist Guilhem Durand the Elder (1231–96), a contemporary of Alfonso. Durand is called “the Speculator” after his masterwork the *Speculum iudiciale* or *Mirror of the Law*, described by R. H. Helmholz as “the most elephantine example” of procedural information, “enormously popular” then.¹ The major modern student of such procedural literature in medieval Spain, José Bono, notes that Durand’s *Speculum* was in

1. R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens: University of Georgia Press, 1996), 27, 89, 118. His introduction contains a bibliographical essay on medieval procedural works. See also Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), “Procedure” on 250–53; and James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), chap. 6, “Canonical Courts and Procedure.” A recent reprint of Durand is *Speculum iudiciale*, ed. Giovanni Andrea and Baldo degli Ubaldi, 4 parts in 2 vols. (Basel: Neudruck d. Ausg., [1574] 1975); the second book is on procedure, the third on criminal procedure. For the situation in the more imperfectly Romanized system in northern France, see F. R. P. Akehurst, “Procedural Law,” in his *The Etablissements de Saint Louis: Thirteenth-Century Law Texts from Tours, Orléans, and Paris* (Philadelphia: University of Pennsylvania Press, 1996), xxiii–xxvii. See also Adolphe Tardif, *La procédure civile et criminelle au XIIIe et XIVe siècles ou procédure de transition* (Paris: Picard, 1885).

every episcopal library there “as the indispensable text” for the bishops’ courts.² Its direct influence on the *Partidas*, as will be seen below, was considerable and demonstrable. Durand’s first edition came in 1271 and his second around 1280; he incorporated wholesale previous legal luminaries who were also well known to Alfonso’s juridical authors of the *Partidas*.

The result of all this scholarly discourse on procedure, Helmholz remarks, mutated Roman law into “an organized and sophisticated system, one that looked different in many respects from that inherited” from Rome. Despite “the rules, principles, terms, and forms of Roman law,” medieval procedure in large part became “a new creation,” which not only influenced modern continental law but also “left its mark” on English and American common law.³

In his exhaustive study of the evolution of Roman law in Europe in the high Middle Ages, Harold Berman too notes that when custom law and Roman law converged, “the resulting ensemble was much different from either.” This novelty “appears nowhere more strikingly than in the procedures” of the courts. Berman posits five major divergences of Romanized medieval procedure that distinguished it from its Roman predecessor. First, each stage of the procedure was written, even to the interrogatories for the witnesses, an unprecedented practice as will be seen below. Second, the oath was introduced “systematically as a testimonial device in the modern sense,” with gratuitous oath ceremonies punctuating the trial process. Third, medieval procedure encouraged the use of counsel, “who argued the law before the judge on the basis of the facts disclosed by the evidence”; this contrasts with the Roman and Germanic practice of allowing a substitute or alter ego instead of the medieval representative. “The concept of legal representation was first introduced by the canonists” and was “closely linked with both theological concepts and ecclesiastical concerns.” Fourth, “a dual system of procedure” was invented by the canonists, so that a summary informal process served some civil cases, including those for the poor, the oppressed, and those without remedy; “it dispensed with legal counsel as well as with written pleadings and written interrogatories.” The fifth procedural contribution was “a science of judicial investigation,” requiring the judge to interrogate by “principles of reason and conscience,” to become convinced in his own mind of his verdict, and empathetically to put himself in the other person’s place.⁴

What sources may be discerned in Alfonso’s own procedural treatise? As with the previous *partidas* but more pertinently in this very technical volume, the academic reader may consult the massive commentary of Gregorio López, covering every title and law of Alfonso’s code. Finished in 1555, and available as footnotes accompanying the text on every page, the running commentary traces Alfonso’s legal sources, potential sources, antecedents, influences, contemporary legal context, congruent materials, and professional comment. Each item invites further exploration via the works cited. López’s glossary of 187 pages in Spanish for the *Partidas*, and his remarkable index of some 550 pages in Latin for the glosses attached, allow cross-references throughout the code on any point. Curiously, this tool is relatively neglected today and in some quarters effectively unknown.⁵ In a general way *partida* three, more than the rest of

2. José Bono, *Historia del derecho notarial*, 1 vol. in 2 tomes to date (Madrid: Junta de Decanos de los Colegios Notariales de España, 1979–82), 1, part 2: 25, and see the procedural literature available in the Spanish kingdoms (22–28) and the assimilation of its doctrine (31–39). Cf. Jerry R. Craddock, *The Legislative Works of Alfonso X, el Sabio: A Critical Bibliography*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986), no.C700.

3. Helmholz, *Classical Canon Law*, 118, applicable to both canon and civil laws.

4. Berman, *Law and Revolution*, 250–51, applicable to canon and civil laws.

5. The most convenient presentation of the glosses of López is as running footnotes to the *Partidas* text, in *Los códigos españoles concordados y anotados*, ed. Pedro Gómez de la Cerna, 12 vols. (Madrid: Imprenta La Publicidad, [1847–

the work, more exclusively depends on Roman law texts. Joseph O'Callaghan, following Alfonso García Gallo, sees such a close relationship to the *Doctrinal de los leyes* of Alfonso's Romanist assistant Jacobo de las Leyes that he regards Jacobo as "the principal author" of this *partida*. Conversely Jerry Craddock holds that Jacobo instead "borrowed heavily from the third *partida*, which was, after all, largely his own work."⁶

HOW A TRIAL WORKS

Since Alfonso unfolds the complications of procedure in a lengthy and diffused fashion, it may be helpful to review the basic elements of a civil trial, viewing the forest before entering in among the many trees.⁷ Two general systems constituted procedure, whether in summary or fuller mode. In the medieval accusatory system, a plaintiff or petitioner would bring a charge; in an inquest or inquisition the authorities themselves initiated a suit to investigate a general situation or a single case, with different procedures in Castilian as against canon law. In the accusatory process a litigant through his agent or procurator (called by the English translator of Alfonso's text an "attorney at law") initiated the suit as plaintiff. He submitted his formula-dictated complaint or petition for redress, which was usually or at least eventually written down, to be scrutinized by ordinary or else delegate judges in the jurisdiction of the plaintiff's residence. The judge or judges then summoned the defendant to appear within a given time, such as twenty days. Three such citations might be necessary, after which the defendant would lose the case by default as contumacious, in an interim judgment that would become final in a year.

With the two adversaries in court, the plaintiff's procurator formally tabled his petition for redress, written up as a Latin brief (the *libellus*, literally "booklet") giving pertinent data and grounds for the action; it could be amended as the case progressed. The defendant's procurator might then respond in writing, with denials, or else petition time to prepare his own case, or even challenge the process on technical or substantive grounds, thus either terminating the case or throwing it into wearying adjudication of the points raised. When the judge(s) received the *libellus* and all hands were clear on the situation, the trial or *litis contestatio* had begun. Each party or his procurator then took the calumny or malice oath, protesting his good will and right purpose before God.

Each side might have an advocate or professional jurist on hand to guide it through legalities. The plaintiff had the burden of proof, the defendant attacking that evidence. Each side, but especially the plaintiff, produced lists of witnesses and questions to aid the judge's interrogation of them. Witnesses could be sworn in by deposition (if unable to appear) or in person. At least two solid witnesses had to testify by personal experience of the facts in question. Documentation such as charters or contracts could also play a role. The judge then formally disclosed the full testimony to the two parties, setting a date to begin their respective arguments (unless they settled out

51], reprint 1872), the *Partidas* in vols. 2–5, indexes in vol. 5. See also *Las "Siete partidas" del sabio rey don Alfonso el IX (=X)*, with the Latin glosses of López in Castilian, ed. Ignacio Sanpontos y Barba et al., 4 vols. (Barcelona: Antonio Bergnes, 1843–44). Craddock, *Legislative Works*, lists the López glosses, separated as well as integrated as footnotes; see especially nos. Bh22 and 25, with index under López and his grandson Gregorio López de Tovar.

6. See Joseph O'Callaghan's chapter, "Alfonso X and the *Partidas*" in the General Introduction in volume 1 of this edition. Craddock, *Legislative Works*, no. C659, includes references to correspondences. See also Marta Madero, "Formas de justicia en la obra jurídica de Alfonso X el Sabio," *Hispania* 56 (1996): 447–66.

7. For this section see especially Brundage, *Medieval Canon Law*, 128–31, and Berman, *Law and Revolution*, 250–53.

of court). The procurator-attorneys but especially the advocate-jurists for each party framed arguments against the other side's witnesses and evidence ("positions"), as well as arguments-in-law or reasoning ("allegations"), orally but sometimes in writing. At any point before or during the trial the defendant might raise objections ("exceptions") and counterobjections; peremptory exceptions targeted a major element in the plaintiff's case, dilatory exceptions targeted a technical error to adjudicate before continuing.

On an assigned day the judge declared his findings and judgment orally, later presenting them in public writing, with copies to both parties. The whole process generated masses of trial records, written up by skilled paralegals called notaries. As today, further appeals were common, with the previous judgment held in abeyance until the appeal could be accepted, argued, and resolved. The procedure was afflicted with many and lengthy delays, great expense, and a range of dilatory motions and strategies at each stage. A sample contemporary trial will be described in detail below, illustrating lawyerly excesses and the sometimes ludicrous expedients employed when much was at stake.

PLAINTIFF, DEFENDANT, JUDGE

The king and his jurists first take up the basic personnel in a civil suit—plaintiff, defendant, judge, proctor, and advocate. Somewhat later he will deal with auxiliaries such as court investigators, witnesses, assessors, and notaries or recorders. Who can and cannot sue? Who is immune from suit and under what circumstances? The answers are convoluted. Spouses cannot sue each other "except for special reasons," for example, and live-in servants cannot sue their masters. Minors, defined as under 25 years of age, must sue through an agent as guardian. A monk is spiritually "dead" and sues through or with permission of his superior. No one can sue the component members of a liable group but rather its representative, as in the case of a town council or a convent. Neither slave nor master can sue the other except in special circumstances. The judge can appoint a representative to sue for someone "in captivity" or absent or dead.

The plaintiff must have in hand all specifics of the object or claim in question, including where relevant its description, measure, color, and weight. Where feasible, movables should be brought to court for examination. The plaintiff can be asked to produce a will, papers, business accounts, notaries' records, certificates of emancipation, and the like. He must give the landmarks of a disputed property and the titles to any object; if he "claims a town, castle, village" or other place, he must state "in detail what it is, as well as its boundaries and all its appurtenances" but not necessarily "everything else belonging to it." Some property is trivial or not susceptible of specification.

Alfonso distinguishes between ownership and possession; since it is harder to prove ownership, the plaintiff ought to sue for possession and only then, if he loses, for ownership. In seeking damages for insult or for injury to self or property, the plaintiff must detail the speech or act and specify the amount requested, telling "where he was struck, wounded, or imprisoned, or where his property or beasts of burden or cattle were taken from him by force, or where his trees were cut down." In the absence of such specifics, the defendant need not answer. The suit must be brought in its proper jurisdiction and at the right time; it is "a great mistake" to attempt suit on civil or major religious festivals or during occupational periods such as the two months of

harvest or vintage. When all is ready, the plaintiff states his case in writing (the *libellus*) or sometimes orally. Since there are a number of invalidating omissions or mistakes possible in making a statement, Alfonso provides a full formula with the five points to include.

Where Alfonso devotes forty-seven essays to the plaintiff, he spares only eleven for the defendant, though he does refer the defendant to investigate and prepare "the same things" as the opposing side. The defendant answers before his own territorial judge. The king has jurisdiction immediately, however, over "damage to a highway, violation of a truce," rape, "counterfeiting the seal of the king or his money," the case of a notorious thief or outlaw, debasement of currency, "or where a lawsuit is brought by a minor or a poor man or one in great affliction, against some powerful person in which justice cannot be obtained by the laws of the land." Alfonso gives instructions for tabling a countersuit, for investigating "the standing" of the plaintiff in the suit ("pay great attention" to this); he shows how to avoid response to a suit, protracting it by a "dilatatory plea" of challenging its documentation as improperly drafted. The defendant should take advantage of his rights to have legal advice and to "examine all the evidence." He may admit the allegations but deny their import. With the defendant's formal answer, the trial has begun. Before that point of *lis contestata* or at any time after it, the defendant may throw up "peremptory" defenses which stop the action until the judge can give a decision on each intervening issue.

As a central figure in the legal drama, the judge receives from Alfonso no fewer than thirty-five essays or laws, in a leisurely review of the kinds of royal judges, ordinary judges for districts or cities, deputy judges at every level, substitute judges, appeals or "superior" judges, the system of judicial arbitrators, and even the men chosen by neighborhood artisans "to settle disputes which arise by reason of their trades." The treatment extends to their qualifications and disqualifying impediments, their manner of appointment and oath-taking, their obligations while sitting, their duties, and procedure. Among those who were disqualified from serving as judges were the deaf, the blind, slaves, those with chronic diseases or bad repute, and monks or religious (it is "unreasonable" that one who abandoned worldly goods "should assume another character to hear and determine the controversies of men disputing about those riches"). A woman was ineligible, since it was "not becoming for her to be present in a crowd of men deciding lawsuits"; but a queen, countess, or lady with a jurisdiction could be a judge, helped by "the advice of learned men." A judge should be loyal, learned, pious, "kind and affable." An "ordinary" judge who would be "constantly" deciding suits had to be older than 20. A deputy judge could be between 18 and 20, but a deputy between the ages of 14 and 18 could act validly only with the consent of both parties to the suit as well as the king's approval.

Alfonso tells how a judge is appointed, gives surety, and takes the oath of office (promising "speedy" decisions), and how at the end of his tenure the ex-judge must answer complaints during fifty days, the complaining public urged on by daily proclamation. The ordinary judges met in a set place "early in the morning until noon" and then from three to vespers, keeping proper appearances, orderly progress, and clerks to record each step and witness it. Admonitions to the judge include seeking the truth of a case "above all other things in the world," using information received, questioning both sides, administering oaths, hearing witnesses, keeping one's feelings secret during the trial (for example, not weeping in sympathy with the complainant beforehand), and delivering a sound decision to put closure to a case. He cannot convey to a deputy judge cases belonging to the sovereignty of king or nobles (*merum imperium*), namely those cases possibly ending in death, mutilation, expulsion, or slavery. A district mag-

istrate must also keep the peace, putting down tumults and arresting outlaws to send to the king's court.

In disputes "men should earnestly desire to have recourse" to arbitration. Alfonso uses thirteen essays on arbitral procedure, including the kinds of cases eligible, the inability to appeal from a decision, and the desirability of agreeing beforehand on a penalty if either party reneges. He discusses what happens when an arbiter dies or enters a religious order (the other associates on the arbitral board lose power), how a time limit is set for the process and a place selected, and how all parties must be present at the opening and the closure. Alfonso does not advert to the water courts, which survive today in eastern Spain to resolve irrigation disputes, and which older historians confused with pre-Reconquest Islamic courts and procedure. These seem less like an arbitration by judges, however, than the arbitration by agreement of artisans within an occupational group, as seen above.

At the city of Valencia, for example, a group of farmers experienced in irrigation matters don judicial robes even today and hold court for all comers at noon Thursday in the side entranceway of the cathedral, with their group decisions immune from further appeal. This Tribunal of Waters is not a collegial set of judges but rather a jury. Their joint session does not sentence or execute, but declares the irrigation custom. They proceed "summarily and without any writing" in two phases. First the syndic of the accused's own irrigation segment denounces him and lets those involved argue their positions. After the robed farmers reach a conclusion, that syndic takes over with his schedule of fines, deciding and enforcing the penalty. Since 1866 the tribunal has had a special status in Spanish public law. A remote origin in a noncollegial subcourt of the Islamic *qāḍī* may be argued. On the wider juridical scene, Spain's laws on water usage have influenced United States water policies.⁸

LAWYERS: PROCTOR/ATTORNEY AND ADVOCATE/JURIST

Alfonso now takes up the trial lawyers. Both plaintiff and defendant enjoyed two complementary types of lawyer. The lesser but very active figure was the proctor, our translator's "attorney." Rather than properly a lawyer in the modern understanding, he was an agent, representative, and general manager of the case for plaintiff or defendant, in court and out. There could be one or more for each party, operating under a power of attorney formally drawn for the client. Proctoring was less a profession than an activity, and its practitioners seem to have picked up their skills from court experience or truncated legal schooling. James Brundage notes that "unlike the advocates, proctors were not expected to be legal experts, and hence depended less on academic credentials and more on their practical ability to manage litigation and to guide litigants successfully through the procedural and bureaucratic labyrinths of the court." They could represent the client in court appearances, "introduce motions or exceptions, plead defenses, or amend complaints, and take other legal actions" in the client's place.⁹

Alfonso devotes a title with twenty-seven essays to the proctor or attorney, nearly double the number he will give to the more eminent advocate. Any individual or corporation such as a town, military order, or bishop (as corporation sole) can appoint

8. See my section on "The *Partidas* in Southwest Mining and Water Law" in the General Introduction in volume 1 of this edition.

9. Brundage, *Medieval Canon Law*, 137–38. On the role of the rhetorical advocate in ancient Rome, see J. A. Crook, *Legal Advocacy in the Roman World* (Ithaca, N.Y.: Cornell University Press, 1995).

a proctor.¹⁰ Ineligible are the insane, deaf, mutes, priests or religious, men under 25 years, slaves, knights on active duty, judges or royal officials, and women except when acting for old or ill relatives with no one else to trust or for relatives in slavery or condemned to death. In capital or equivalent criminal cases the defendant cannot give power of attorney but must defend himself in person unless that is impossible. Alfonso provides a formula containing all the elements of a valid power of attorney, whether oral or written. Certain notables should always use a proctor, including crown appointees to office and "any other distinguished man of a town." In a few cases a plaintiff may act for another without power of attorney, particularly a husband acting for his wife, as well as partners or joint heirs for each other.

Explicit conditions regulate multiple proctors acting for a single client, according to various circumstances; any subproctor, appointed to duties out of court, must be over 17 years old. Though a proctor has general powers, as stated in his commission from the client, he cannot settle with the adversary even in preliminary motions unless that particular power is explicit in his instructions. A badly drafted or defective power of attorney invalidates proctorial powers; and those powers normally end with a final verdict, the client's death, or revocation. Alfonso tells how to fire your attorney and appoint another; if the trial has begun, reasons might include the attorney being in jail or ill or absent or too busy with several suits. The client can seek restitution if his proctor loses the case because he is "negligent or idle" or fraudulent. When judgment goes against the proctor, the client is basically responsible for payment.

The advocate was a more imposing figure than the proctor. As Brundage notes, they were the "elite lawyers" and the "legal experts who often boasted advanced degrees in canon or civil law and sometimes in both." They "advised clients about technical questions of law, prepared the formal submissions that procedural law required, and presented legal arguments on behalf of their clients." In the delicate matter of fees, very high, the proctor paid the advocate discreetly, with the vulgar money concealed in a bag or container.¹¹ Alfonso restricts this profession to a man "familiar" with the laws "for a long time," who "has been selected by the judges and men learned in the law" of the jurisdiction in which he acts. If found by examiners to be "learned" and "fit," he must swear a public oath to carry out his duties thoroughly, speedily and responsibly, not taking "any suit which is fraudulent or false" or which does not promise "a good termination." His name is then "recorded in the book" of advocates. Alfonso allows fees to suit the circumstances of a case, but he legislates a maximum of 100 maravedís. The advocate cannot share "any portion" of property in contention, lest he become greedy and unfair.

Ineligible for the office are men under 17 years, monks or canons (except for their own communities), the legally "infamous," Jews or Muslims (except "to act in his own behalf and for others belonging to his religion"), and anyone "who has received a reward for fighting with a [wild] beast" (perhaps as a bullfighter),¹² though such fighters are not excluded if they are unpaid amateurs. As for women, it is "neither proper nor honorable for a woman to assume masculine duties, mingling publicly in order to argue cases for others." In ancient times Calpurnia "was very learned," for example, and was "so shameless that she annoyed the judges with her speeches, so that they

10. On the evolution of this corporative role and the *Partidas*, see Evelyn S. Procter, "The Towns of León and Castile as Suitors Before the King's Court in the Thirteenth Century," *English Historical Review* 74 (1959): 1–22, with Craddock, *Legislative Works*, no. C762. Procter takes up the topic later in wider context, in her *Curia and Cortes in León and Castile, 1072–1295* (Cambridge: Cambridge University Press, 1980), especially 67, 162–65.

11. Brundage, *Medieval Canon Law*, 65, 135.

12. Alfonso's *Cantigas de Santa Maria* devotes one series of miniatures to a bullfight, and the entertainment appears also in his *Crónica general*.

could not do anything with her," a cautionary tale of loss of modesty. Alfonso instructs the advocate to stand before the judge, ask for his attention, state the case and its origins, "adduce his arguments as clearly as he can," and speak in polite, quiet tones without abusive language (unless relevant and unavoidable). The judge can extrude him from the court for a set period if he becomes "very annoying" or "too loquacious."

SUMMONS, CHARGE AND COUNTERCHARGE, OATHS

As a preliminary to the trial, a judge issues summonses through his bailiffs. When these cannot be served on recalcitrants who conceal themselves, "proclamation should be made" in three public markets, so that relatives and friends might be induced to respond. Those exempt from accepting a summons include "a crier while he is making proclamation in a town," a priest saying mass, the commander of a fort in danger, people ill, wounded, or in jail, hermits, or a man in his own home (except in case of crime) "because everyone should be secure in his home and enjoy repose while there." A woman at home, except in case of crime, should either respond through a proctor or receive the judge or bailiff to record evidence in her house. A schedule of fines punishes any who refuse the summons—100 maravedís for an eminent personage, thirty for knight or noble, and ten for the lower classes. Those summoned have three days to appear, or nine if they are away in another kingdom. They may also explain any delays to the judge ("swollen rivers or deep snows" or a mugging "on the highways").

Having explored the summons at length, Alfonso adverts to two other preliminaries in brief titles, respectively of eight and two essays. The first, title 8, outlines the law for awarding control of property by default when the party or parties will not respond to a summons or refuse to cooperate. A formula for expressing this interlocutory or interim judgment is provided here; and the plaintiff must give "some security" binding him to continue to prosecute his claim. The property involved may be concealed movables or a debt, in which case the judge can seize the defendant's chattels. The defendant has a year in which to appear, pay the costs and fines incurred, and reopen the case. After that the plaintiff is true owner, but the defendant may still enter a claim. Complications come if the property is a debt or obligation. If an accused criminal refuses to appear, the judge can "cause proclamation to be made in the neighborhood" where the accused lives or where he is accused of committing the deed; the proclamation is made by the public crier three times over three periods of thirty days. Title 9, one of the two shortest in the whole *partida*, lays down the rules for sequestering a disputed property during a suit, the reasons for which this can be done, and the period during which the trustees may hold it. In the case of a spendthrift husband, "his wife can petition the judge to remove her dowry and the property that belongs to her" to a trustee who will control and dole out such resources.

After final questions by each party and the judge, to further clarify all the facts at issue, the trial itself begins "by complaint and answer," namely by the challenge already contained in the pleading (*libellus*) and a corresponding denial. At this point both parties take the calumny or trickery oath, swearing under pain of perjury and God's stern punishment that they are proceeding in good faith and honesty.¹³ This was a solemn moment, of great importance to Alfonso's contemporaries, so he interrupts

13. Also called by Alfonso the *mancuadra* oath, since there are five points to be sworn just as there are five fingers in a perfect hand. See Manuel Paulo Merêa, "O enigma da mancuadra," in his *História e direito (escritos dispersos)* (Coimbra: Universidade de Coimbra, 1967), 1: 163–75, with Craddock, *Legislative Works*, no. C475. See also Juan García González, "El juramento de mancuadra," *Anuario de historia del derecho español* 25 (1955): 211–55, with Craddock, no. C282.

his discourse here to devote twenty-nine essays to every aspect of oaths and to their many uses in law. Helmholz has noted the “quite extraordinary importance” that an “oath-dominated” justice gave to oaths in canon law and by extension in civil law. Oaths in court and in juridical matters were “important and ubiquitous.” Canon law, secular law, “and indeed the societal assumptions of the day” had “faith in the efficacy of oaths and a concern for the crime of perjury to a degree that seems all but incomprehensible today.”¹⁴ Besides the many oaths that might occur in a trial, and the oath-sworn officers who attended to them, probatory oaths had a role in cases of lesser importance; purgative oaths by an accused and his friends could supplement defective proofs; and witnesses undertook an oath more elaborate and solemn than do witnesses today. (The witness oath *de veritate dicendi* became abused in early modern times for self-incrimination and thus became controversial.)

Alfonso defines and classifies oaths; he discusses who can make an oath and who can administer one, and when and under what circumstances. Among other categories, people “under the age of 14 years, or of weak mind or insane” or “spendthrifts,” or “of great silliness,” may not administer oaths. With the approval of a judge, judicial oaths between the litigants can resolve differences in a town, a marriage, or a religious community. One essay argues that a suit is as validly settled by an oath as by sentence of a judge, though the latter has more advantages. Alfonso offers prescriptions for swearing: with hands on a sacred object, respond to a formula such as that spelled out here; and at the final “so help you God,” reply “amen.” A formula for swearing Jews runs on for forty-five lines in this translation, invoking biblical episodes (though without the maledictions or exaggerations such oaths could display). It was administered in the synagogue with the oath-taker’s hands on the Torah, before Jewish and Christian witnesses. Muslims here have their own formula of thirteen lines, to be administered at the mosque door, standing with hand held “toward the south to a point called al-Qibla” toward Mecca.¹⁵

INTERROGATORIES, WITNESSES

After this long detour about oaths Alfonso returns to the next stage in the trial, the interrogatories. These he covers in a single page, the shortest title or division of all. Here the judge especially, but also the contenders, make a final effort to elicit the truth by inquiry under oath. The responses require another title as “admissions,” which can end the trial if made freely, knowingly, without force or error or recantation, and precisely at this stage.

The all-important matter of evidence and proofs consumes over 100 pages, something under a third of the entire *partida*. The burden of proof is on the plaintiff. Proof is presented to the judge, not to the defendant, though the defendant should be present and can demand a transcript. Evidence should focus on “the principal controversy” instead of on points irrelevant to it, and must not wander into “arguments of philosophy” since the court is incompetent to decide those. Kinds of evidence include confession while in court, a credible witness speaking from his own memory, and documents drafted by a notary. Presumption or “strong probability” can prevail in a case

14. Helmholz, *Classical Canon Law*, 144, 173. See especially chap. 6 on “Religious Principles and Practical Problems: The Canon Law of Oaths.”

15. See the exemplar of 1260 and its relation to this *partida* in Manuel Muro García, “En el archivo municipal de Úbeda, un precedente de las *Partidas*: cómo debían jurar los cristianos, judíos y moros,” *Boletín de la Real academia de la historia* 91 (1927): 376–84. A variant of 1324 is in Fernando Bujanda and Francisco Cantera, “¿Como han de jurar los judíos?” *Sefarad* 7 (1947): 145–47. On both contributions see Craddock, *Legislative Works*, nos. C123 and C497; cf. C3.

but “very often” may not be true. Inspection can yield evidence, as for example “an examination by women of good reputation” in a case involving pregnancy. A criminal case normally cannot be proved by presumption but only by “evidence as clear as light,” with “no doubt whatever,” the court preferring to acquit the guilty rather than convict the innocent.¹⁶ Trial by combat or “contest of knights or of foot soldiers” is “still in use today” though the wise fathers “did not consider it legal evidence” and anyway it amounts to blasphemy as “tempting God.”

Alfonso devotes no less than forty-two essays to the central topic of witnesses, explaining the stage at which they are called and the procedure for deposing distant witnesses before the trial begins. Almost anyone 14 years or older (21 for a criminal case) can be a witness; excluded are perjurers, counterfeiters, forgers, abortionists, murderers, rapists, traitors, thieves, pimps, crazy persons, or “a gambler who openly frequents taverns and gambling houses, or a woman who goes about in men’s clothes.” Someone of “notoriously bad reputation” is ineligible except in treason cases, and then only if he “has first been put to the torture.” Among the excluded are a man who fights wild beasts for money (seen also above in a different context) and “a woman who openly commits wickedness with her body for money.” Wives and husbands do not testify in favor of each other, or commercial partners for each other. “A woman of good reputation” can be a witness except in testamentary matters. These generalities break down into further nuances, exceptions, and complications.

The manner of swearing a witness is meticulously presented: hand on Gospels, he swears to a long set of particulars, including secrecy until the judge makes the testimony public. The judge now solemnly interrogates the sworn witness, apart with a notary, “listening kindly” in silence, “looking at him all the time in the face,” then repeating the testimony back to the witness. The witness also has his rules and must speak in concrete detail from his own experience. Hearsay is hardly ever acceptable. A cause needs at least two credible witnesses (five in cases of notarized debt, and five to seven to validate a will); but no more than a dozen are allowed to each party. The judge can coerce an unwilling witness, taking him into custody, but not a prelate, high noble, “woman of aristocratic family,” pilgrim, person over 70 years, or “a knight on the frontier.” Perjury brings severe penalties; the judge may even “torture [perjurers] in order to extract from them the truth.” This title covers many other aspects of recourse to witnesses, such as the conflicting testimony of two witnesses, additional witnesses during an appeals process, the timing for necessary delays and the time allowed a witness, and citation of contending parties to come hear publication of testimony given before the judge and to respond.

INQUISITION: *PESQUISA*

Here Alfonso inserts a full title on the nonaccusatorial alternative trial process called an investigation or inquest, *pesquisa* (Latin *inquisitio*). The Castilian term comes from Latin *perquisitum*, from *perquirere*, as inquisition is from the cognate *inquirere*. This procedure allowed public authority to initiate prosecution or to enter and resolve a dispute without an intervening plaintiff or charge, often on common report, bad repute, or puzzling situation. Inquisition had rudimentary antecedents

16. On the difficulty and eventual failure of this standard, see the commentary of Manuel Gallego Morell, “La apreciación de la prueba en material criminal (notas para la historia de su legislación),” *Boletín de la Universidad de Granada* 22 (1950): 193–99, and Craddock, *Legislative Works*, no. C263. On Alfonso’s proofs more widely taken, from oaths to witnesses, see Sebastián Martín-Retortillo y Baquer, “Notas para un estudio de la prueba en la tercera *Partida*,” *Argensola* 22 (1955): 101–22.

in Roman imperial, Carolingian, and more recent expedients; England's Domesday Book and grand jury may seem analogous. But Brundage sees the canonical inquisition as appearing "quite abruptly" as a novelty in criminal law, indeed Pope Innocent III's "own creation."¹⁷ Civil society was already using its structure in both civil and criminal cases. As Henry Ansgar Kelly notes, however, "the *pesquisa* was a formal investigation that preceded the levying of charges, whereas in canon law the ex officio inquisition was the trial itself," the court summoning the suspect to investigate his public infamy.¹⁸

The routine *pesquisa* aimed to resolve claims over land, boundaries, rents, obligations, or claims between corporations such as towns and monasteries, or against the crown, or between individuals. Procedurally the king or public authority would hear the situation explained by the principals or their procurators, then swear an ad hoc board of inquisitors (anywhere from one to eight) with instructions to subpoena and depose witnesses around the district (any number), asking each separately a list of detailed questions on matters of fact. Unless their instructions had the inquisitors settle the problem in place, they sent the voluminous acts to the king or the local authority. After some months of analysis, judgment was read out publicly and an officer delegated to execute it. Along the way compromise by the parties might abort the process, or lawyerly objections remove it to appeal. Another whole class of civil actions, pursued with the same methodology, resolved administrative puzzles such as crown fiscal rights, information needed, unhappy subjects in a district, crown tenants requesting protection, tax traditions, or import-export complications.¹⁹

Before turning to Alfonso, gross misunderstandings about inquisition and *the* Inquisition must be addressed. Henry Ansgar Kelly has briskly disposed of nomenclatural misconceptions among scholars in a short but essential study. Besides the common use of inquisition in civil law, both for civil and criminal cases, it was employed in ecclesiastical courts. Investigation into heresy was only a subspecies of the genre, separately styled as "heresy inquisition" (*inquisitio heretice pravitatis*). At this period, inquisition was not an institution but sporadically appointed ad hoc commissions. The heresy inquisition diminished due process by its concealment of witnesses' names and by encouraging self-incrimination through confession; but its judges enjoyed no greater procedural powers than other judges (except by individual abuse) and in general no greater restrictive authority over the defendants.²⁰

In introducing the general procedures of inquisition, Alfonso notes that some "serious offenses" cannot be unmasked by witnesses "introduced by parties in court" but need "examiners who have power to take testimony themselves by reason of their office," when the truth "can be established in no other way." Such an investigation can cover a country, a district, or a place, instituted because the culprits are unknown, or "on account of the bad reputation of the place" or of its magistrates, or simply because

17. Brundage, *Medieval Canon Law*, 147.

18. Henry Ansgar Kelly, *Canon Law and the Archbishop of Hita* (Binghamton: State University of New York, Center for Medieval and Early Renaissance Studies, 1984), 173.

19. Evelyn S. Procter, *The Judicial Use of Pesquisa in León and Castille, 1157–1369*, supplement 2 of *English Historical Review* (London: Longman's, 1966); and her *Curia and Cortes*, 40–41, 67, 90, 245–46; Joaquín Cerdá Ruiz-Funes, "En torno a la pesquisa y procedimiento inquisitivo en derecho castellano-leonés de la edad media," *Anuario de historia del derecho español* 32 (1962): 483–517; Jerry R. Craddock, "La pesquisa en Castilla y Aragón: un caso curioso del *Libre dels feyts* de Jaume I," *Anuario de estudios medievales* 27 (1997): 370–79. Cf. Craddock, *Legislative Works*, nos. C166, C556. Joseph F. O'Callaghan, *The Cortes of Castile-León, 1188–1350* (Philadelphia: University of Pennsylvania Press, 1989), 168–70.

20. Henry Ansgar Kelly, "Inquisition and the Prosecution of Heresy: Misconceptions and Abuses," *Church History* 58 (1989): 439–51. See too the magisterial analysis of the whole trajectory of inquisition, both historical and mythical by Edward Peters, *Inquisition* (New York: Free Press/Collier Macmillan, 1988); on procedure see especially 11–17, 58–67.

the king wishes benignly to have an overview of some place or as a preventative against crime. An inquisition may also arise when "both parties agree" to such a wider approach. It can target the whole population of a suspect place "or only a portion." The inquisitors must be commissioned by the king or a chief magistrate, should number at least two plus a clerk, normally cannot consist of clerics or religious, and must follow such rules as sharing information on the witnesses. Examples of "secret" matters to investigate include "a man killed in a deserted neighborhood or by night" by an unknown assailant, a woman violated in a lonely place, a church robbed at night by unknowns, a house or crops burned, "or a highway obstructed and men wounded, robbed, taken prisoner or killed there." Judges and clerks are sworn in the usual detail; they must write out each witness's statement and must examine each witness "separately," then bind him to secrecy until the record of the investigation "has been read" publicly.

DOCUMENTARY EVIDENCE AND THE FORMULARY

More than oral witnesses, Alfonso's generation prized evidence received from written sources such as documents. Consequently the king devotes much more space to documentary proofs than to any other evidential theme. Title 18 includes 121 essays; in the dense printed translation this constitutes a booklet of 66 pages. Harold Berman has remarked on the unique role of writing in these courts, "in contrast to both the older Roman and the Germanic" procedures. The inaugurating complaint had to be written, as did its reply; witnesses were interrogated from written questions; a written record was kept. The judge's sentence was in writing and was based on the written record. "The emphasis on writing was so exaggerated as to strongly suggest a magical element."²¹ More than magic or mystery was at work, however. The twelfth and thirteenth centuries experienced a psychosocial transformation from a basically oral to a literate mentality, as Latin (and of course vernacular) literacy became common among the merchant classes of Mediterranean Europe, with pragmatic literacy a necessity even for the knightly class, and with records massively and continuously being produced. The habits and assumptions of a literate society had spread "to penetrate and structure the intellect itself."²² The bias of Alfonso's generation is the bias we share today, that written is better than oral, that artificial memory is superior to natural memory, and that literacy and writing by themselves denote superior intelligence. Thus the spread of a technology, writing, became a measure of progress. Literacy in Alfonso's day, however, was not simply writing. The writer-troubadour Ramon Llull considered himself "illiterate" until he later absorbed Latin letters and rhetoric; on the other hand, a truly literate man might prefer to compose and dictate rather than write. The phenomenon of a writing mentality was accompanied by the decline of audible reading, the concomitant rise of a visual culture of unvoiced words, the multiplication of easier and faster scripts, and the emergence of the author as a more self-conscious agent.²³

21. Berman, *Law and Revolution*, 250, 252.

22. Robert I. Burns, S.J., *Society and Documentation in Crusader Valencia* (Princeton, N.J.: Princeton University Press, 1985), chap. 17. M. T. Clanchy pioneered the study of this phenomenon in his *From Memory to Written Record: England, 1066-1307* (Cambridge, Mass: Harvard University Press, 1979), followed closely by Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1983). See also Robert Lopez, "The Culture of the Medieval Merchant," *Medieval and Renaissance Studies* 8 (1979): 52-73, especially 54-57.

23. Paul Saenger, "Silent Reading: Its Impact on Late Medieval Script and Society," *Viator* 23 (1982): 367-414 and

For Alfonso a “document” is any instrument drafted by a notary or validated by a credible seal; but “there are many kinds.” A “privilege” embodies a crown favor and follows a detailed sequence and format, even to the placing of date, witnesses, notary’s name, and lead seal with silken cord. Other crown documents may have their elements differently arranged in less formal guise but with the same seal. The general run of crown documents “should be sealed with wax,” however, and written either on parchment or for lesser business on paper (“parchment of cloth”). Paper was expensive in Europe and rarely used until Alfonso’s own day. Its growing use can then be charted around the Mediterranean littoral from Valencia (where the Christian crusaders took over a famous Muslim paper industry) almost down to Rome. Parchment still dominated from Rome southward and in non-Mediterranean Europe including Castile. Conservative rulers like Alfonso’s contemporary Emperor Frederick II Hohenstaufen disdained a product “made from rags” which could not survive the centuries as could leather parchment. Alfonso here allows paper for arrest warrants, collection notices, and such ephemera or lesser categories of record.²⁴

For the remainder of title 18 Alfonso instructs notaries how to draft every conceivable category of charter, in many cases supplying a full document with all the legal boilerplate appropriate to a juridical instrument, each following the strict formulas required by notarial rhetoric. These 50 pages, a small book, amount to a formulary, a genre growing popular then in Europe and Spain.²⁵ The preeminent scholar of such formularies and of the notarial art, José Bono, states flatly that this section of Alfonso’s *partida* is “the most complete formulation of such material in the West” for that time and “a true *Ars notariae*.” He also demonstrates from detailed structural and other comparisons that the *Summa* of the great Salatiello is here “the direct and exclusive source” on which Alfonso’s jurists relied, in this matter, while Guilhem Durand and Rolandino de’ Passagieri contributed to the nonformulaic explication of the notarial system.²⁶

Such formulary exemplars, chosen for their formalities or categories of expression, indirectly convey by their contents illuminating bits of social history. A contract given in full shows a merchant chartering a ship to convey wax and bales of hides from Seville to La Rochelle. The ship’s master must provide “sails, yards, masts, cables, anchors, and everything else, and with two pilots and forty sailors, together with ten soldiers armed and equipped with their crossbows, and four servants, and one small vessel.” The ship must put in at Lisbon, Ribaldo, Coruña, or Santander to pick up the merchant’s partners and more cargo. The cost is 200 silver marks; a time is set for the voyage; and performance penalties are imposed. Another charter is a partnership between two Seville merchants for ten years, each contributing 1000 Alfonsine maravedís, “for purchasing colored cloth” to be resold in the Street of the Franks in Seville.

with extensive elaboration his *Space Between Words: The Origins of Silent Reading* (Stanford, Calif.: Stanford University Press, 1997). Cf. Burns, *Society and Documentation*, 114–15.

24. Burns, *Society and Documentation*, chaps. 23 to 28 on “The Paper Revolution,” and Burns, “Paper Comes to the West, 800–1400,” in *Europäische Technik im Mittelalter, 800 bis 1400: Tradition und Innovation*, ed. Uta Lindgren (Berlin: Gebr. Mann Verlag, 1996), 413–22.

25. Early formularies in medieval Spain are rare, but see Ferran Valls i Taberner, “Un formulari jurídic del segle XII,” *Anuario de historia del derecho español* 3 (1926): 508–17; Francisco Sevillano Colom, “Un nuevo formulario inédito, siglo XIII,” *Anuario de historia del derecho español* 19 (1948–49): 548–89; Mariano Usón Sesé, “Un formulario latino del la cancellería real aragonesa (s. XIV),” *Anuario de historia del derecho español* 6 (1929): 321–91; Zacarías García Villada, “Formularios de las bibliotecas y archivos de Barcelona (siglos X–XV),” *Anuari de l’Institut d’estudis catalans* 4 (1911–12): 533–52; *Formularium diversorum instrumentorum: un formulari notarial valencià del segle XV*, ed. Josepa Cortès (Sueca: Ribera del Júcar, 1986), and *Formulario notarial castellano del siglo XV*, ed. Luisa Cuesta Gutiérrez (Madrid: Consejo Superior de Investigaciones Científicas, 1947).

26. Bono, *Derecho notarial*, 1, part 1: 245–46.

Another contract has an author promising to spend full time “to write the text of such and such a book” until completed, using always “the same hand [writing]” according to the sample page attached. In another the king licenses a notary, investing him “with a writing case and a pen.” There are instruments for legitimizing one’s bastard, emancipating a son, and adopting a child. A formula for a royal pardon is given and explained, a very common affair in Alfonso’s day. An arranged marriage includes the proviso: “if she is not willing to accept him as her husband,” the dowry is to remain in the hands of the jilted fiancé. A marriage contract has the fiancé declare “I promise to take and receive you Doña Teresa as my lawful wife, and I agree to accept you as my wife”; to which she responds in the same phrases. Afterward “it is customary in some countries for the husband to take his wife by the hand and place rings on her fingers” to close the ceremony.

Alfonso tells us that “men frequently enfranchise their slaves” and provides an exemplar for such occasions, by which “Mohammed, his wife Axa” and their named sons and daughters are now free, with the Muslims paying their master “a hundred doubloons of gold.” In one document a sharecropper contracts to keep half of each year’s produce; in another a monk disposes of his property and claims as he prepares to take his vows; in another a wife approves her husband’s sale of property. Another has two enemies establish peace about “the disagreements, disputes, grudges, and insults of which they have been guilty,” as “they kissed each other before me, a notary public.” A royal award might lease “customs or ports or salt-mines” or other utilities to administer for a share of revenues. If the king orders “castles, bridges, ships” or anything else built, the agreement is to be written out on one page in duplicate, then torn across an intervening set of letters (A, B, C), and each party given one of the now matching halves. There are charters for auditing tax receipts, for providing security at ports or passages, for making a passport, for authorizing collections on behalf of a charity, for extending a debt, for setting a bail or bond, for making a will or a codicil on it, and for a variety of other private and public activities.

There is a sample power of attorney; and a sample final decree for a judge who reviews the course of a trial; and a sample draft for an appeal (“frequently” done). Alfonso tells us that “many frauds” bedevil the documentary scene. On the other hand, a parchment remains valid which has been “gnawed by rats, or eaten by worms or by something else, or has been wet by water,” as long as it is still legible. If a charter is challenged as a forgery by reason of its handwriting, Alfonso cautions, “one man cannot always write in the same way”; weather, pens, and inks can affect letters, as can “the infirmity or age of the notary.” In such cases the judge is to summon “reliable and learned men who know how to recognize and understand the forms and shapes of letters, and their variations.” Every category had its formulas and guiding rules, and some had concomitant ceremonies as when a lord grants a fief to his vassal “with a staff, a ring, and his gloves” along with a kiss.

NOTARIES, SEALS, JUDGMENT, APPEALS

Discussion of documentary evidence leads Alfonso naturally to the power behind the pen, the notary, for whom he reserves a title of sixteen essays. By Alfonso’s day the scribe-amanuensis had largely given way in Mediterranean Europe to the publicly licensed official called a notary, the bulk of whose business was drafting the flood of

private and public documents necessary for a modern society.²⁷ The Roman law renaissance was carried through at the grass-roots level by this ubiquitous paralegal. Merchants and individuals needed him to record in binding juridical form their partnerships and payments, contracts, loans, bills of lading, and sales. Private individuals made their wills and gifts and borrowings and family affairs through him. Government, from crown to municipality to church corporations, employed him for taxes, audits, court records, statutes, treaties, appointments, and embassies. Bologna counted 2,000 notaries working in its population, Milan 2,000, Padua 500, and Pisa 230. Genoa had 200, or one notary for every 500 men, women, and children (the current ratio of American lawyers, whom the notary resembles, is 1 lawyer per 319 people). Stephen Bensch has found over 40 notaries in thirteenth-century Barcelona, or 1 for every 875 citizens. In Spain each Jewish community had its interior *sōfer* and each Muslim community its *ṣāhib al-wathā'iq*, scribes in a very different tradition, but these groups also had access to the notary.²⁸

The notary's apprenticeship, examination, and progress were monitored directly or indirectly by the crown, though he might be licensed for the service of king, town, general population, or specific office. His skills reflected two intertwined trainings. The *ars dictandi* aimed at elegance of style, including rules of grammar, logic, and composition; the *ars notariae* concerned juridical formulations, each in its Roman law context. Notable texts already existed for this art, by Rainero de Perugia, by Salatielle, and in 1255 the *Summa* of Rolandino, which were all familiar to Alfonso's jurists.²⁹ The notary kept a permanent though abbreviated version of each item in his register volumes, depositing them at his death with a public authority. Alfonso takes up in turn the qualifications for becoming a notary, the licensing examination, procedure in office, instructions on drafting, rules for renewing or replacing a charter, and scale of fees according to the category of business or manner of sealing. If a crown, court, or town notary forges anything, his hand will be cut off. All must respect a notary or face punishment.

Appended to discussion of notaries is a brief title on seals, which lend a document special authentication. The king appoints sealers not only for his chancery but at least two for every locality, each of the two holding one plate or half-seal for security. A dozen fees are listed as the prices for sealed instruments. A page and a half discuss consultants and experts summoned by the judge before rendering a sentence; their contribution is secret, written, and "well rewarded." Title 22 concerns the final action of a suit or trial, namely the terminating judgment or verdict, though it touches also on interim interlocutory judgments on "some doubtful question" connected with the case. Instructions include: how and when a sentence can be altered; how to render sentence if the plaintiff is absent; when to offer an oral judgment; how to use suitable language; who pays court costs; what circumstances invalidate a sentence (for example, if delivered in a tavern or inappropriate place, or with the judge standing instead of "quietly seated"); how to proceed when one of three judges contradicts the other two; when a judgment loses force; and much more along these lines.

Though the trial is finished, a world of appeals lies open, and that is the subject of

27. On Spanish notaries see Burns, *Society and Documentation*, chap. 5, "The Notariate" and Burns, *Jews in the Notarial Culture: Latinate Wills in Mediterranean Spain, 1250–1350* (Berkeley: University of California Press, 1996), especially chap. 2, both with bibliographical information, including materials on Jewish and Mudejar scribes. The magisterial synthesis by José Bono, *Derecho notarial*, covering each aspect of the notariate in Spain kingdom by kingdom is indispensable; see for example the introduction of the *ars dictandi* in Spain, 1, part 2: 15–22, 28–31, and its assimilation, 31–39.

28. Bensch, *Barcelona and Its Rulers, 1096–1291* (Cambridge: Cambridge University Press, 1995), 39–41, 378.

29. Burns, *Society and Documentation*, chap. 22, "Rhetoric and Style."

the twenty-nine essays of title 23. Immediately after the verdict the proctor, attorney, or client need only say “I appeal”; otherwise he must write out a full formula of details within ten working days of the judgment, and read it before an appeals judge. Any party to the trial or affected by it can appeal all or part of a decision, except for the usual list of bandits, rebels, poisoners, “violators and robbers of virgins and widows,” counterfeiters and the like. One can appeal any sentence but usually not the judge’s decisions within a trial, “except where a judge wrongly orders torture” to get at the truth. If the appellant is absent (in school or the army, on pilgrimage, or “prevented by heavy snows or by swollen rivers or by robbers, or by his well-known enemies” or by illness), he has ten days to file from the time of his return. The appeal then goes forward within the following two months or a time frame set by the appellate judge. Grounds can include a decision one cannot understand or which the parties interpret differently. Besides the hierarchy of superior judges, one can appeal from any judge to the king’s court (though not from that court); kings “have always with them in their court men learned in the law.” Kings should especially hear appeals for the very poor, the very old, and the formerly “rich and honored” now fallen into “oppressive” poverty. The complainant can pursue an appeal on the same matter only twice; thus no fourth judgment is possible except by the king. Alfonso provides instructions on procedure for the appellate judge, such as requiring copies of all writings from the first judge, requesting this civilly and by sealed post within three days.

Several short titles of one or two pages note possible recourse or judicial remedies beyond appeal. The aggrieved person can apply for the king’s favor or grace, “humbly upon their knees and in few words” (no “long documents”), that the king simply review and reverse the judgment. Minors or their guardians may similarly beg a review from an appropriate judge, based on irregularities, resulting in an annulment or restoration (*restitutio in integrum*) to pre-trial status. Finally a judge might be asked to vacate or set aside a judgment on such grounds as that all judges were not present or that the core of evidence had been vitiated by forged documents, false witnesses, or bad evidence. The treatise on civil procedure ends with instructions on carrying out a judgment and seizing or levying property (“courteous words” but “then assemble armed men”).

PROPERTY LAW AND OWNERSHIP

After nearly 300 pages allocated to procedure, a coda of 56 pages covers the basics of property, an all-important topic that has echoes elsewhere in this code. A third of the space deals with ownership and who owns what. The next largest segment discusses the paradox of prescription for gaining ownership, while three concluding titles describe possession, encumbrances, and buildings.

The placement of property law between procedure and domestic law has long baffled critics, from Vicente Vizcaino Pérez in 1784 through Charles Sumner Lobingier in 1931 to Eelco van Kleffens in 1968. A more logical and Romanist sequence would start with principles, go on to persons, and then take up things and property, with procedure further down the line at the end. Alfonso’s generation saw the world differently. After devoting his first book to godly affairs, his second to royal temporalities, and his third to procedure (particularly needed in the evolving civil courts of Alfonso’s new society), the king had determined to devote the fourth book to marriage and domestic life as a cornerstone of his legal system. This novel position, addressed in our next volume, would have displaced and postponed property law,

despite the centrality of property in thirteenth-century life. A relatively short and compendious treatise (some 50 pages in this translated version) satisfies the contemporary preoccupation with property, while preserving the next full book for Alfonso's own preoccupation with domestic society.

Jurists of this period "were vocal champions" of an economy of private ownership, Brundage notes, which entitled an owner to accumulate all he could and dispose of it as he pleased, though reserving some obligations toward the community.³⁰ Wills of the period also show a growing preoccupation with property boundaries and markers. The reconquest from the Muslims during Alfonso's century had made vast tracts of land as well as many urban properties available for free settlement, and a lively real estate market had resulted as properties continually changed hands.³¹

Property has many meanings and applications, not all of them covered in this preliminary general treatise. The property laws of medieval Spain, taken in their wider expressions, hold a particular fascination for the modern United States, especially as they affect community property in marriage. The persistence of the *Partidas* and medieval Spanish jurisprudence in legal arguments over vast tracts of public lands in both California and Texas today was noted above in the General Introduction to this edition. While these property laws have influenced a dozen states in the United States, either directly or by case citations, Spanish law on domestic community property has been particularly relevant, with California as its prime exponent. American California continued and indeed wrote into its constitution the Mexican and Spanish law inherited from the Middle Ages, by which each spouse held separate property while also enjoying a vested half-share in community property. Sometimes confusingly applied by a common law vocabulary and interpretive bias, this tradition nevertheless persisted and became a foundation of women's rights. When the gross advantages for Californians became evident with the advent of federal income tax, Congress in 1948 yielded to clamor from the other states, amending the Internal Revenue Service code to allow all couples by a kind of legal fiction to apply the community property system to payment of federal taxes. Thus one legacy of medieval Spanish law continues today as a nationwide phenomenon. The evolution of this community property system, so alien to American common law, is traced in the General Introduction, which also touches on other property-related survivals such as probating wills, administering estates, and regulating water rights and the claims of riparian owners.³²

This *partida* includes in the word "property" real estate, movables, claims, debts, offices, and revenues, and embraces the ruler's eminent domain, the individual's personal property, and things belonging to all in common. All can claim and use together "the air, the rain-water, and the sea and its shores" with the fish and fauna there for the taking. All use "rivers, harbors, and public highways." Riverbanks belong to the adjoining landowners, but every man can use them to moor boats, repair them, and land fish or merchandise to sell there. The common seashore is the space covered by high tide "whether in winter or summer"; a man can build a hut there, dry his nets, or "construct galleys." Gold, pearls, and gems found on the shore go to the finder. No one can build a mill, weir, or other structure if it interferes with common uses and the environment. In a town the fountains, squares, roads, beaches, commons, mountains and pastures belong to its residents "poor as well as rich," though the town as corpora-

30. Brundage, *Medieval Canon Law*, 80. On property law see also Berman, *Law and Revolution*, 237–45.

31. For Castile, see Teófilo F. Ruiz, "The Market for Land in Late Medieval Castile" in his *Crisis and Continuity: Land and Town in Late Medieval Castile* (Philadelphia: University of Pennsylvania Press, 1994), chap. 5.

32. See my section on "The *Partidas* on the U.S. Frontier" in the General Introduction in volume one of this edition.

tion may hold separately its own properties and revenues. The crown owns ports, tolls, saltworks, fisheries, and metal works. No one owns sacred areas; the religious personnel merely administrate them. Graves also make a property sacred. If Muslims take a sacred place, it reverts to secular status until recovered. Foreign Muslim property belongs to the captor except in times of "truce and peace," though a captured castle or town must go to the king. Town walls and gates share in sacrality. Here Alfonso alludes to the Mediterranean legend or ritual of the fratricidal town founder so fascinating to anthropologists of urban form today, and he cites the primal story of Romulus killing Remus.³³

Hunters can take wild animals and birds, but can claim to own bees only so long as they are enclosed in hives. Men domesticate "at their homes peacocks, sparrow-hawks, India hens, cranes, geese, pheasants," and of course tame fowl such as chickens, as well as livestock and even zebras. For deer they use "snares or traps or dug pits." Alfonso says that an alluvial deposit becomes part of the property it joins. An island rising in the sea ("it happens occasionally") goes to the first to settle there, under the overall governor of the region. "Islands made by rivers" should be divided by adjacent owners, and when a river changes course the adjoining owners share the old channel. If one's land becomes an island or is covered by flood, ownership remains intact.

A number of puzzles are proposed where two men claim an indivisible object. Who is owner when "a man paints a picture" on another's "board or beam," or sketches or designs on another's stone or wood; when a builder uses another's "stone, brick, pillars, [or] lumber"; when an author of a "book of verse or of any other kind whatsoever" writes on another's parchment in good faith; and when the roots of one man's tree move onto another's land for nourishment? In each case a settlement is proposed. Treasure trove on one's own land is kept; if a workman or other happens upon it, he and the owner split it; if a man searches another's land for the treasure, the property owner gets it all; if the searcher has recourse to "enchantment" the crown takes it all; if the original possessor can prove his claim, it belongs to him. Finally the case of a coronation is considered, where the chamberlain "is accustomed to throw gold and silver money or other valuables along the streets," partly out of celebratory joy and partly for traffic control ("they run to pick them up," so the streets become "less crowded"); the people retrieving the valuables of course become the owners.

PREScription, EASEMENTS, USUFRUCT

Few possessory expedients are as necessary to a sophisticated society, and few as riddled with moral ambiguities, as prescription. "Unlike customary rights, which normally arose out of the tacit consent of the people involved," Helmholz reminds us, "prescriptive rights were initiated in circumstances in which one person's usage of property violated the right of someone else."³⁴ A man who in good faith keeps possession of an immovable property or a claim or a right-of-way for thirty years (forty in canon law) can assume ownership as well; for movables, three years suffice. Medieval jurists sought to circumscribe this necessary theft, ruling out the use of force or possession during a period of war. The *partida's* title 29 defends the prescriptive usurpation but excludes such items as crown taxes, sacred property, roads, and other communal

33. Joseph Rykwert, *The Idea of a Town: The Anthropology of Urban Form in Rome, Italy, and the Ancient World* (Princeton, N.J.: Princeton University Press, 1976), especially chap. 1 on "Town and Rite: Rome and Romulus."

34. Helmholz, *Classical Canon Law*, 175. The long debate over prescription by medieval lawyers is covered in his chap. 7, "Economic and Property Rights: The Canon Law of Prescription."

holdings (though not the revenues and chattels of the town corporation), the property of minors, married women, or people absent in the army, in captivity, on pilgrimage, or at school. A debt owed for thirty years ceases to exist. Since prescription is a move from possession to ownership, a separate title defines the kinds and origins of possession, as well as the various ways in which possession can be lost or property condemned.

A companion title surveys the concept and practice of easements (*servitudes*), which are rights or entitlements over another's property "as masters have over their slaves."³⁵ Urban easements are rights one building carries over another, as in sharing its gutter, taking support from its beams, limiting its height, or protecting the light available. Rustic easements include right-of-way over another's property, an irrigation channel arriving through others' farms, or water taken routinely from another's well, pond, or spring. If no width has ever been stipulated for a right of way, it is to be eight feet and on bends in the road seventeen feet. Usufruct is an easement residing in a person, rather than in a land or building, giving as an example the revenues but not the ownership of a movable or immovable property. Use is a less valuable servitude, since it does not include income or anything except simple using. In all easements, those who profit have the duty of maintenance. The law limits easements: they are not applicable to sacred or common properties, cannot be sold apart, and are lost by ten years' nonuse (twenty when the owner is absent).

A final title focuses on buildings new and old, from houses to castles, insofar as they give rise to grievances or are regulated by law. Any male over 14 years can forbid someone from building on streets or plazas without authorization. No one can interfere with cleaning "pipes and gutters" even though "bad odor" or street blockage results. A dangerous structure must be repaired or demolished. With a judge's order, a person can remove someone's tree or wall that he fears will fall. All are obliged to "keep up the castles and walls of cities," as well as "the sidewalks, bridges, and gutters of towns," with crown-appointed "men of distinction" and experience in charge, supported by all citizens, not excluding "knights, priests, widows, and minors." Streets must be kept "free of all obstacles and clear." A space of fifteen feet must be maintained between the inner side of a town wall and the buildings. No shops or buildings can go up around a church "except such as pertain to works of piety and mercy." One can build as high as one wants so long as a neighbor's rights are preserved. And each person must keep up his own "castle, tower, or any other building."

PRAXIS: A CONTEMPORARY TRIAL

A treatise on court procedure tends to be dull; and because it must allow for the multiple variations and directions a trial can take, it can become confusing. Fortunately some trial records have survived from thirteenth-century Spain, so a concrete and specific trial drama may be visited. The most important of these saw Castile and Aragon-Catalonia struggle for control of the church of Valencia. King James of Aragon had conquered the "kingdom of Valencia" from the Muslims in a long, bitter, and expensive series of crusades from 1232 to 1245, and was to reconquer areas of it again after extensive revolts. His rival and sometimes enemy Castile persisted in claiming

35. On easements in this *partida*, with attention to Alfonso's advances over his Roman sources, see José María Desantes, "Evolución de la prescripción adquisitiva en las servidumbres prediales," *Boletim da faculdade de direito da Universidade de Coimbra* 30 (1954): 32–100, and Craddock, *Legislative Works*, no. C205. See also Manuel Vicent Febrer Romaguera, "Las servidumbres prediales en el derecho foral valenciano medieval," *Anuario de estudios medievales* 25 (1995): 67–80.

control of the new diocese of Valencia, which would have given to King Fernando III and his son Alfonso X el Sabio great influence not only over the new conquest but—in those days of close interaction between government and church—over James’s subjects and even governance. The canonical arguments were all on Castile’s side; the political realities, however, favored James the Conqueror.

The kings of Castile and Aragon were the protagonists in this case, but since the question was superficially ecclesiastical the case came into canonical courts, with the metropolitan archbishops of Toledo and Tarragona as the putative combatants. (Castilian Toledo had as primate-archbishop the great hero of the Reconquest Rodrigo Jiménez de Rada, chancellor of Castile and noted historian). The conflict had gone on already during the crusade itself, as agents for the church of Castile traveled along and ostentatiously performed metropolitan functions, with the bishop of Tarragona matching them function for function, setting up parishes, baptizing, and otherwise establishing one’s party as being in possession. Each side also collected its documentation, and King James formally conferred Valencia in his 1236 crusade parliament on Tarragona.³⁶

When Valencia city fell to James in October 1238, and while the crusade continued into the south for another half-dozen years, the Toledo primate tabled his plea at Rome, claiming Valencia *de iure communi* as historically a suffragan of his metropolitanate and *de iure speciali* as Castile’s by an 1166 grant of Pope Alexander III. Tarragona tabled a counterclaim. Pope Gregory IX as judge in the first instance and an eminent jurist delegated three judges (one from Toledo, one from Tarragona, and one from neutral Languedoc) to hear the case by summary procedure during a period of two months, with five months to prepare documents and arguments. The principals and their procurators were cited to St. Mary’s church in neutral Navarre, whose king was away on crusade and whose bishopric was vacant. The Tarragona team included as advocates two juridical luminaries: Vidal de Canyelles, the codifier of Aragon’s and Valencia’s laws, and Pere Albert, the great commentator on the laws of Catalonia. Almost certainly Ramon de Penyafort helped out, as adviser to King James and the major canonist then of Christendom.

The Toledo party presented its written plea (*libellus*) and the Tarragonans responded, officially opening the trial (*litis contestatio*). The opposed procurators each took the calumny oath, stating their honest belief in their positions. The trial progressed slowly, with oaths, adjournments, and recesses as needed. Tarragona as defendant produced eight lines of argument, with Toledo responding, and then a series of twenty-eight “positions.” The Toledan documents included Visigothic councils (especially the ecclesiastical division of King Wamba), Alexander III’s papal bull, and materials from Pliny, the Roman emperor Constantine, St. Isidore of Seville, and Pope Innocent III. The Tarragona procurator scoffed at some as “fictions,” at others as inadmissible because they were translations from Arabic, and at yet others as not pertinent to the claim at hand. Tarragona’s arguments stressed possession as nine-tenths of the law, presumption of law as favoring the possessor, Valencia’s geography as belonging to the map of Aragon, and papal crusade privileges. Toledo rebutted these as irrelevant.

36. The trial is analyzed at length in Robert I. Burns, S.J., *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier*, 2 vols. (Cambridge, Mass.: Harvard University Press, 1967), 1: chap. 14, 2: 494–502. The manuscript and published records of the trial are discussed on 494–95. The elaborately edited and discussed transcript of the trial, the life’s work of Vicente Castell Maiques, has finally appeared, literally on his deathbed: *Proceso sobre la ordenación de la iglesia valentina entre los arzobispos de Toledo, Rodrigo Jiménez de Rada, y de Tarragona, Pedro de Albalat (1238–1246)*, 2 vols. (Valencia: Corts Valencianes, 1996) with extensive legal and historical background. For the newly discovered final stages at Rome, see 2: 147–52.

Toledo then brought out documents from a half-dozen monastic archives, each witnessed and sealed. Tarragona countered with a claim to prescription and a list of twenty-five arguments. Public opinion (*fama publica*) supported Tarragona's claim; King James and his predecessors had striven to conquer and reclaim the area, Tarragona expecting in equity to receive its church; the Aragonese had exercised ecclesiastical functions during the crusade, consecrating churches and a cemetery and naming a bishop, and had even done so forty years earlier among Valencia's Mozarabs during a royal raid; the Toledan documents were all improperly drawn and must be redone; Castile's agent in the Valencian crusade army carried no letters and couldn't prove his mission; and no one possesses what he is unable to keep. The Toledo party dismissed all this as usurpation and robbery. They counterattacked by complaining that Tarragona had illegally reversed roles, that the defendant was now acting as plaintiff!

The judges pursued this interesting point, spending much time on its arguments; they finally decided to suspend judgment as to its implications in law and to get on with the case, but without acquiescing in the reversal. Thus freed, the Tarragonans brought in a parade of documents and reasonings over the continuing protests of Toledo. Tarragona swore in the bishops of Huesca and Tarazona, various clerical dignitaries from James's realms, and three knights. They adduced a bull of Urban II (actually a forgery), a phrase from St. Vincent's martyrology (actually a later interpolation), and other charters, all rejected by Toledo as inapplicable. Toledo then submitted documents from centers as far away as Paris and Burgundy; Tarragona refused to respond until Toledo would first reply more satisfactorily to the Tarragona case.

At this point Tarragona won a major victory in its campaign of delaying and obfuscating. Before more witnesses could be called, they said, the court must allow a wide collecting of books, documents, and witnesses' depositions. The Toledans reluctantly concurred as long as they might do the same. The court then swore in a team of one Toledan and one Tarragonan as delegate judges to roam over the lands of King James, and a similar team for King Fernando's realms, each team supplied with a questionnaire ("Did Tarragona receive the keys to the mosque, post guards?" and so on). They were to subpoena materials and witnesses, striving to guarantee the authenticity of the documents and to probe the *fama* or public opinion on Valencia's ownership, "taking care that you do not interview an unreasonable number of witnesses, as forbidden by canon law." Even here, the Tarragonans demanded delay over improprieties in the wording of the instructions. Again the judges refused to go in this new direction but again without taking a position on it, "lest it happen that while such points are being argued, the progress of the trial be retarded." They then recessed until January 1240.

The ensuing interviews, preserved in the trial acta, are touchingly human and sometimes amusing. The delegate judges requisitioned books under threat of excommunication, copied documents copiously, and harried monks in their libraries and crusade veterans in their towns with interrogations. One monk begged for return of the books safely "since of all treasures we hold ancient books the greatest." The priest Brother Peter, nettled by the questioning, retorted crossly that he couldn't know the books were authentic because he hadn't seen them made; eventually he allowed that the old monks he had known fifty years previously had considered them authentic. Veterans of the crusade recounted their impressions as to popular opinion about ecclesiastical ownership in the armies. An archpriest remembered Toledo as favored by some, "but who they were, he does not remember, and if he could remember, he

wouldn't tell." Rebuked by the court, he amended this to: "if he could remember, he would tell."

The second phase of the trial opened later that same January. The judges and their staff began the painstaking task of reviewing the mass of documentation that had flooded in from the kingdoms. They described the manuscript titles, incipits, rubrics, miniatures, dates, seals, marginalia, and script, attempting to establish the authenticity and antiquity of each text. Since four codices were in Arabic, the judges swore a Jew and a Muslim "by their own laws" as experts. The judges puzzled over the interchangeable *v* and *b* in a Toledan manuscript and called on two experts to clarify the usage. Where a seal was missing, they meticulously noted how "on the upper part there remains a bit of wax" with an impression of a cross barely visible. They rejected some items for such reasons as improper copying or absence of seals. Faced with this cornucopia of proofs, the Tarragonans again temporized; they demanded a full copy of every item to be made for their own leisurely perusal. The judges consented only to their recopying directly pertinent materials; but once again they deferred any decision on the point of law involved, with the possible copying of everything postponed indefinitely.

The Tarragonans now came up with a geographic scruple. There was another Valencia, but in Castile. Were the documents about Valencia therefore tainted? This sideshow continued until interrupted by presentation of depositions gathered by the two teams, along with some books belatedly arriving. Tarragona protested that this documentary phase had passed. As the documentation was further debated, the Tarragonans kept reintroducing the question of two Valencias. The court therefore subpoenaed witnesses on the point. Tarragona eventually insisted that "there were formerly a number of Valencias," at least three with their own bishops. When Toledo was allowed to bypass this farcical wrangle and introduce more witnesses, Tarragona appealed the point to a future court. Toledo promptly appealed from whatever judgment the Tarragona judge might be contemplating, though he had as yet taken no position. When the court tried to continue with the evidence presented by Toledo, the Tarragona judge stalked out, followed by the procurator and whole party of Tarragonans. The other two judges sent a messenger to recall them, with instructions to deliver the order "before the door of the inn" where they lodged, with witnesses and with a notary to register everything. The Tarragonans had made their point; next day they were present, waiving previous difficulties and offering both new evidence and rebuttals (over Toledo's violent objections).

On 24 January 1240 the judges gathered in St. Mary's to debate their verdict, the Tarragona judge refusing to concur with the others. Moving to the cloister where both parties and many spectators waited to hear the decision read, the judges encountered another obstacle: the Tarragona procurator asserted that the Toledo judge lay under excommunication because of plural benefices. Should the reading proceed, Tarragona would appeal to the pope on that ground; should the decision favor Castile, Tarragona would appeal to the pope on the grounds of its whole case. The Castilian judge produced on the spot a papal charter clearing him of the accusation of excommunication. Now the Languedocian judge began reading the summary account of the proceedings, with the Castilians shouting to their judge "read with him!" The reading ended with conveyance of the Valencian diocese to Castile. The Tarragona judge then read his own "long recitation of fact and of law" over Toledo's strong objections and appealed to Rome, but his fellow judges had already fled. Next morning the Tarragona procurator led a party to the inn where the Languedocian judge was headquartered. After harsh words on both sides, the judge fled to his room to avoid complications in

law from hearing the document read. Undeterred, the procurator of Tarragona followed, shouting his message “at the door of the room,” while those inside “made a noisy outcry” to foil this maneuver. The Tarragona procurator, however, slipped the document into the judge’s room through a crevice in the door.

In Rome the notable jurist Cardinal Sinibaldo de’ Fieschi (later Pope Innocent IV) began hearing the appeal. Though the case dragged on there until spring 1246, with a definitive finding for Castile, political realities eventually left Tarragona and King James the Conqueror in possession. The Spanish portion of the trial had lasted about a month, the full trial some nine years (1238–46). The mass of paperwork was reduced in the trial’s acta to a small book. The court costs for Tarragona mounted to 87,500 silver sous and for Toledo probably the same, equivalent to a total of some six hundred annual knight’s livings. In a case of this magnitude and high visibility, monitored by two prideful monarchs, with first one side then the other winning, the qualities of the juridical personnel from judges to notaries were first-rate. The record shows that the lawyers earned their keep.

THE MONKEY TRIAL: MONTCADA VERSUS URGEL

Before leaving this practical exemplar of the theories in Alfonso’s third *partida*, two other trials may be briefly noted for the reader’s instruction and amusement. In the fourteenth-century masterpiece of Castilian verse, *The Book of True Love* by Juan Ruiz, the Archpriest of Hita, a mock trial has Sir Wolf lodging a complaint against Dame Fox before Sir Monkey the mayor of Monkeyburg on the grounds of stealing chickens. The crime occurred at the house of Sir Goat in the reign of King Lion. The advocate for the defendant was Mr. Sheepdog, and for the plaintiff Sir Greyhound. This extended fable “shows a profound knowledge of the niceties of procedural law” and from that aspect has been intensively analyzed by Henry Ansgar Kelly in his *Canon Law and the Archpriest of Hita*. Kelly follows the trial procedure through the story from charge and countercharge through adjournments, exceptions, allegations, objections, witnesses, lawyers’ tricks, and offer of compromise, to complicated verdict. This satire on courts and lawyers by an insider, elucidated by a modern commentator, makes a painless introduction to medieval legal procedure.³⁷

A thirteenth-century case almost as bizarre as the trial in Sir Monkey’s court, and involving King James the Conqueror, has been discovered and studied by James Brundage.³⁸ The court record, on some 230 pages of fragile paper, of which half are now missing, lies in the archives of the Arago-Catalan realms. It centers on Alvaro count of Urgel, who in 1253 by arrangement of King James married at the early age of 14 the king’s niece Constança de Montcada. When the nobles of Urgel pressured

37. Kelly, *Canon Law and the Archpriest of Hita*, especially chap. 4, “Procedure in the Court of Don Ximio.” Kelly argues for a somewhat later date than 1330 for its composition. Text and translation are on facing pages in *The Book of True Love: A Bilingual Edition*, ed. Anthony Zahareas, verse trans. Saralyn Daly (University Park: Pennsylvania State University Press, 1978); the fable is in verses 321–71, pp. 102–13. A series of articles and an unpublished dissertation by Steven D. Kirby argue intricately that the monkey trial procedure is based only on the *Partidas*. See his “Juan Ruiz and Don Ximio: The Archpriests’s Art of Declamation,” *Bulletin of Hispanic Studies* 55 (1978): 283–87; “Juan Ruiz, Don Ximio and the Law” in *Studies in Language and Literature*, ed. C. L. Nelson (Richmond: Eastern Kentucky University Press, 1976), 295–300; and “Legal Doctrine and Procedure as Approaches to Medieval Hispanic Literature,” *La corónica* 8 (1979–80): 164–71. On these items see Craddock, *Legislative Works*, nos. C378–C381. Kelly rebuts this position, arguing for Durand’s *Speculum* instead of the *Partidas* as governing the monkey trial procedure, in “Juan Ruiz and Archpriests: Novel Reports,” *La corónica* 16 (1987–88): 32–54, with Craddock, *Legislative Works*, no. C734.

38. James A. Brundage, “Matrimonial Politics in Thirteenth-Century Aragon: Moncada v. Urgel,” *Journal of Ecclesiastical History* 31 (1980): 271–82. King James’s deposition for this trial in 1261 fills two folios (279). Brundage’s context and details illumine procedure in Alfonso’s day and afford much incidental information.

Alvaro to make a politically more advantageous marriage with Cecília d'Anglesola, and when a promised dowry of 6,000 gold pieces failed to arrive from the Montcada family, young Alvaro professed to doubt the validity of his marriage. In 1256 he betrothed and in 1257 married Cecília, while his first wife Constança brought suit before the Tarragona metropolitan to abort this new romance.

The case soon went to the court of the bishop of Urgel, while the Montcadas angrily invaded Alvaro's lands. As the legalities became more complex, arbitration was attempted in 1257 by the great jurist Ramon de Penyafort. When no agreement ensued, Constança appealed to Pope Alexander IV, who threatened excommunication and interdict if Alvaro would not take her back. The case went to the bishop of Huesca at Lérida in 1260, who found for Constança. With Alvaro unyielding, Pope Urban IV sent the case for review to his delegate judges Penyafort and the bishop of Barcelona. At this juncture Alvaro compounded his political and legal troubles by returning to his first wife, causing his second wife also to sue him at the papal court. The delegated judges for this phase were the bishops of Bayeux and Toulouse, who upheld the second marriage, the only judges during this whole process who reached that verdict. Alvaro now reversed himself again and moved back with Cecília, causing a fresh scandal and yet another legal review in 1264 by the bishop of Barcelona (Penyafort removed himself as ill and over 80 years old).

Alvaro himself now petitioned the papal court for an unbiased judge from southern France, where Cecília's family had influence. The bishop of Béziers consequently opened a review in 1265. Constança then appealed to Rome for the trial to return, on grounds of false information by Cecília, to the bishop of Barcelona. That bishop removed himself in 1265 in a public ceremony, however, citing his obligation to join King James's army to put down the Muslim revolt in Murcia. The bishop's delegate, with Ramon de Penyafort again in play, reviewed the case and confirmed the validity of the first marriage. In 1266 Penyafort appealed to Pope Clement IV to put an end to the case by a definitive judgment. After a year's review before a delegate judge in Rome, a final judgment went out in 1267 in favor of Constança. Alvaro, already threatened with a feudal suit for not showing up on the Murcia crusade warfront, and with King James invading his land of Urgel, fled to Cecília's family and in March 1268 died, in debt for a quarter of a million sous. His will favored his second wife, restored the dowry of his first wife, and named Cecília's son as his successor.

The main issues of the interminable brouhaha had been the possibility of underage marriage, the claim of nonconsummation due to Alvaro's impotence (temporary, since he notoriously had a lively sex life with prostitutes), and the complexities of voluntary consent. The hapless Alvaro had tumbled into the world of lawyers and had spent half his short life in its multiplying and ruinously expensive technicalities until relieved by death.

SUGGESTIONS FOR READING

This list combines materials from the footnotes with some general works on medieval law, especially those in English, that may illumine elements of procedure.

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ANALYTICAL TABLE OF CONTENTS

THIRD PARTIDA: PROCEDURE AND PROPERTY	Page 533
Title I: Justice	534
Law I: Nature	534
Law II: Benefits	534
Law III: Maxims	535
Title II: Plaintiff (<i>demandante</i>)	536
Law I: Defined	536
Law II: Considerations Before Suing	536
Law III: Actions by Emancipated Against Former <i>Paterfamilias</i>	537
Law IV: When Brother May Sue Brother	538
Law V: When One Spouse May Sue the Other	538
Law VI: When Menial or Servant May Sue Master	538
Law VII: How Minor May Be Sued	539
Law VIII: Suits by and Against Slaves	539
Law IX: Same	540
Law X: Suits Against King or Regular Clergy	540
Law XI: Tutor <i>Ad Hoc</i> Appointed for Minor Defendant	541
Law XII: Representative Appointed for Absent Defendant	541
Law XIII: Suits by and Against Corporate Bodies	542
Law XIV: General Rule Regarding Defendants	542
Law XV: What Plaintiff Should Ascertain Before Suing	542
Law XVI: Movables as Subject Matter Should Be Brought Into Court	543
Law XVII: Documents to Be Produced	544
Law XVIII: Production Prevented by Loss of Property	545
Law XIX: Penalty for Preventing Production	545
Law XX: Failure to Produce Upon Demand	545
Law XXI: Where Production Must Be Made	546
Law XXII: Removal Before Production	546
Law XXIII: Consequences of Failure to Produce	547
Law XXIV: Production Required After Recovering Possession	548
Law XXV: Specific Description of Subject Matter Required	548
Law XXVI: Exceptions to Foregoing Rule	549
Law XXVII: Ownership and Possession Distinguished	549
Law XXVIII: Advantages of Possession	550
Law XXIX: Answer Required of Defendant in Possession	550
Law XXX: Action by One Forcibly Dispossessed	550
Law XXXI: Damages Must Be Specifically Stated	551
Law XXXII: Place of Bringing Action	551
Law XXXIII: Time of Bringing Action; Prohibited Days	553
Law XXXIV: Same; Church Festivals	553
Law XXXV: Judicial Acts Permitted on Festival Days	553
Law XXXVI: Imperial and Royal Festivals	554
Law XXXVII: Service of Writs Suspended During Harvest Season	554
Law XXXVIII: Suits on Festival Days by Consent of Parties	555
Law XXXIX: Necessity of Preparing Proof	555
Law XL: Plaintiff's Demand (<i>Libellus</i>); Essentials	555
Law XLI: When It Need Not Be Written	556

Law XLII: Irregularities in Presenting Demand	556
Law XLIII: Penalty for Excessive Demand	557
Law XLIV: Penalty for Fraudulent Demand	557
Law XLV: Consequences of Demand at Improper Place	557
Law XLVI: Presentation of Demand Not Compulsory	558
Law XLVII: Exception to the Foregoing Rule	558
Title III: Defendant (<i>Demandado</i>)	559
Law I: Considerations Before Answering	559
Law II: Same; When Action Is for Property Claimed by Defendant	559
Law III: Penalty for Wrongful Denial of Possession	560
Law IV: Where Defendant Must Answer	560
Law V: When Answer Must Be Made Before the King	561
Law VI: Defendant's Privileges Before Answer	561
Law VII: Form and Effect of Answer	562
Law VIII: Confession and Avoidance; Effect	562
Law IX: Dilatory Pleas	562
Law X: Same; When Insufficient	563
Law XI: Peremptory Pleas in Bar	563
Title IV: Judges	564
Law I: Meaning and Kinds	564
Law II: Appointment	564
Law III: Qualifications	565
Law IV: Disqualifications	565
Law V: Age	566
Law VI: Assignment, Oath, and Security	566
Law VII: Duties in General	567
Law VIII: Attitude Toward Litigants and Counsel	568
Law IX: Disqualification by Relationship	568
Law X: Disqualification by Interest	569
Law XI: How They Should Ascertain Facts	569
Law XII: Termination of Lawsuits	570
Law XIII: Impartial Demeanor Enjoined	570
Law XIV: Judicial Reports in Criminal Cases	571
Law XV: Care in Rendering Decisions Enjoined	571
Law XVI: Likewise Proper Associations and Deportment	571
Law XVII: When Actions May Be Referred to Deputy Judges	572
Law XVIII: Same; Limitations	573
Law XIX: Same; Duties of Deputy Judges	574
Law XX: Selection and Jurisdiction of Deputy Judges	574
Law XXI: Loss of Jurisdiction	575
Law XXII: Challenge of Judge	575
Law XXIII: Arbitrators; Kinds and Authority	576
Law XXIV: Matters Subject to Arbitration	577
Law XXV: Parties to Arbitration	578
Law XXVI: Duties of Arbitrators	578
Law XXVII: Same; Where Time for Award Is Limited	579
Law XXVIII: Death or Withdrawal of Arbitrator	580
Law XXIX: Compulsory Awards	580
Law XXX: Same; When Not Permitted	581
Law XXXI: Disqualification of Arbitrator Discovered After Submission	581
Law XXXII: The Award; Requisites and Rendition	582
Law XXXIII: Same; When Time Is Limited	583
Law XXXIV: Same; Excuse; Invalidity of Award	583
Law XXXV: No Appeal from Award	584

Title V: Attorneys in Fact	585
Law I: Defined	585
Law II: Qualifications and Grounds for Appointment	585
Law III: Appointment by and for Minor	586
Law IV: Appointment by Alleged Slave	586
Law V: Eligibility for Appointment	586
Law VI: Knights; Disqualification	587
Law VII: Same; When Qualified	587
Law VIII: Royal Officials Disqualified	588
Law IX: Ambassadors Disqualified	588
Law X: Necessity of Power of Attorney	588
Law XI: Personages Who Must Act Through Attorneys	589
Law XII: Limitations Upon Appointment of Attorneys	589
Law XIII: Mode and Form of Appointment	590
Law XIV: Power of Attorney; Form and Essentials	590
Law XV: Same for Action in Behalf of Minor	591
Law XVI: Same; for Action to Recover Son	591
Law XVII: Same; for Action Against Tutor	592
Law XVIII: Several Attorneys; Powers	592
Law XIX: Authority of Attorneys	592
Law XX: Ratification of Authority	593
Law XXI: When Attorney Must Give Surety	593
Law XXII: Duties of Attorneys in Actions	594
Law XXIII: Termination of Attorneyship	594
Law XXIV: Removal of Attorney	594
Law XXV: Accounts and Expenses	595
Law XXVI: Duty to Make Reparation for Negligence or Fraud	596
Law XXVII: Satisfaction of Judgment Against Principal	596
Title VI: Advocates (<i>Abogados</i>)	597
Law I: Definition and Etymology	597
Law II: Qualifications	597
Law III: Disqualifications	597
Law IV: Same; Gladiators	598
Law V: Same; Infamous Persons	598
Law VI: Judicial Appointment of Advocates	599
Law VII: Arguments by Advocates	599
Law VIII: Same; Correction of Mistakes	600
Law IX: Disclosure of Professional Communications Forbidden	600
Law X: Acting for Both Parties	600
Law XI: Same; Judicial Prevention	601
Law XII: Suspension of Advocate	601
Law XIII: Selection and Oath	601
Law XIV: Compensation	602
Law XV: Penalty for Fraudulent Conduct	603
Title VII: The Summons	604
Law I: Nature and Issuance	604
Law II: Persons Thereto Subject	605
Law III: Same; Exceptions; Women	606
Law IV: Same; Plaintiff's Parents, etc.	606
Law V: Same; Former Master	607
Law VI: Same; Women	607
Law VII: Time of Appearance; Extension	607
Law VIII: Penalty for Disobeying	608
Law IX: Penalty for Refusing to Issue	608

Law X: How Long Summoned Party Must Wait	609
Law XI: Excuse for Non-Appearance	609
Law XII: Subsequent Removal from Jurisdiction, Not	610
Law XIII: Penalty for Alienating Subject Matter	610
Law XIV: When Transfer of Subject Matter is Permitted	611
Law XV: Consequences of Fraudulent Transfer	611
Law XVI: Same; Where Transferee Is the More Powerful	612
Law XVII: Testamentary Disposition Permitted	612
Title VIII: Judicial Award of Possession	614
Law I: Nature:	614
Law II: Occasion and Mode	614
Law III: Penalty for Interference with Possession	615
Law IV: Effect of Awarding Possession	616
Law V: Penalty for Forcible Dispossession	616
Law VI: Time and Manner of Holding Possession	616
Law VII: Proceedings for Default of Party Summoned	617
Law VIII: Disposition of Income from Property Awarded	619
Title IX: Sequestration	620
Law I: Nature and Grounds	620
Law II: Duration	621
Title X: Commencement of Actions	622
Law I: Preliminary Examination of Parties	622
Law II: Same; Subsequent Change of Answer	623
Law III: Same; Sufficiency of Answer	623
Law IV: Plurality of Claims; Order of Hearing	624
Law V: Same; Order of Decision	624
Law VI: Same; Priority Observed	625
Law VII: Statement of Claim; Plurality of Causes; Sufficiency	626
Law VIII: Pendency of Action; Effect	627
Title XI: Oaths of Parties	628
Law I: Nature and Necessity	628
Law II: Kinds and Manner of Taking	628
Law III: Administration	629
Law IV: Same; by Attorney	630
Law V: Appraisal Oaths	630
Law VI: Minor's Oath Against Tutor	631
Law VII: Effect of Oath by Incompetent	632
Law VIII: Release from Oath	632
Law IX: When Oath Should Be Tendered	633
Law X: Trial by Oath	633
Law XI: Considerations in Taking Oath	634
Law XII: Advantages of Oath	635
Law XIII: Same; As Regards Property in Dispute	635
Law XIV: Consequences of Oath	636
Law XV: Disposition by Oath Compared with Judgment	636
Law XVI: Same; When Oath Has Greater Force	637
Law XVII: Benefits and Disadvantages of Oath	638
Law XVIII: Disposition by Oath as <i>Res Judicata</i>	638
Law XIX: Oath of Christians; Form	639
Law XX: Oath of Jews; Form	639
Law XXI: Oath of Moors; Form	641
Law XXII: Time and Place of Administering	641
Law XXIII: Accusatory Oath; (<i>Mancuadra</i>)	642
Law XXIV: Same; By Whom Taken	642

Law XXV: Disposition by Oath; Vacation	643
Law XXVI: False Oath; Consequences	644
Law XXVII: Same; Excuse	644
Law XXVIII: Same; Special Cases	645
Law XXIX: Same; Insufficiency	646
Title XII: Examination of Parties After Action Begun	647
Law I: Nature of Interrogatories	647
Law II: Advantages and Scope	647
Title XIII: Admissions	648
Law I: Nature	648
Law II: Force and Effect	648
Law III: Kinds	649
Law IV: How Made	649
Law V: Invalid if by Compulsion or Mistake	650
Law VI: Other Grounds of Invalidity	651
Law VII: Extra-Judicial Admissions	652
Title XIV: Proof and Presumptions	653
Law I: Nature	653
Law II: Proof of Denial not Usually Required	653
Law III: Presumption from Excessive Bequest	654
Law IV: Proof of Minority; Burden	655
Law V: Presumption of Freedom	655
Law VI: Proof of Payment	656
Law VII: Introduction of Proof; Relevancy	656
Law VIII: Kinds of Proof	657
Law IX: Proof of Legitimacy	658
Law X: Presumption of Continued Ownership	658
Law XI: Presumption of Interest in Contract	659
Law XII: Presumptions in Criminal Cases	660
Law XIII: When Inspection of Subject Matter Is Required	661
Law XIV: Presumption of Death	661
Law XV: Proof by Law or Custom	661
Title XV: Time for Taking Proof	663
Law I: Term; Purpose	663
Law II: How Terms Should be Fixed	663
Law III: Extensions of Term	663
Title XVI: Witnesses	665
Law I: Definition and Advantages	665
Law II: Time of Examination	665
Law III: Examination Before Commencing Action	666
Law IV: Same; Special Cases	666
Law V: Same	667
Law VI: Same	667
Law VII: Same	668
Law VIII: Qualifications of Witnesses	668
Law IX: Same; Age	669
Law X: Disqualification; Criminal Cases	670
Law XI: Same; Relatives by Affinity	670
Law XII: Competency of Slave; Proof	670
Law XIII: Same; Disqualifications; Exceptions	671
Law XIV: Lineal Relatives of Party Disqualified	671
Law XV: Spouses and Brothers Cannot Testify For Each Other	672
Law XVI: Members of Family Disqualified in Suit by Outsider	672
Law XVII: Female Witnesses	672

Law XVIII: Parties Disqualified	672
Law XIX: Vendors and Judges Disqualified in Certain Cases	673
Law XX: Advocates, Attorneys, and Tutors Disqualified in Their Own Suits	673
Law XXI: Partners Cannot Testify Against Each Other	673
Law XXII: Strangers and Enemies of Parties Disqualified	674
Law XXIII: Witnesses Must Usually Be Sworn	674
Law XXIV: Manner of Taking Oath	675
Law XXV: Same; Contents	675
Law XXVI: Judicial Examination Following Oath	675
Law XXVII: Depositions of Outside Witnesses	676
Law XXVIII: Mode of Examination	677
Law XXIX: When Hearsay Is Admissible	677
Law XXX: Re-examination After Submission of Interrogatories	678
Law XXXI: Written Statements by Witnesses Generally Excluded	678
Law XXXII: Number of Witnesses	679
Law XXXIII: Time Allowed for Producing Witnesses	680
Law XXXIV: Judge May Hear Additional Witnesses	680
Law XXXV: Compulsory Attendance of Witnesses; Exceptions	681
Law XXXVI: Testimony of Brokers	681
Law XXXVII: Publication of Testimony	681
Law XXXVIII: Judicial Consideration of Evidence Before Arbitrators	682
Law XXXIX: Additional Witnesses in Appellate Court	683
Law XL: Weight and Effect of Testimony	683
Law XLI: Conflict of Testimony	684
Law XLII: Penalty for False Testimony	684
Title XVII: Official Investigators	685
Law I: Nature and Advantages of Investigation	685
Law II: Duties of Investigators	686
Law III: Scope of Investigation	686
Law IV: Qualifications of Investigators	687
Law V: Number of Investigators	687
Law VI: Excuse from Acting as Investigator	688
Law VII: Expenses of Investigators	688
Law VIII: Protection and Respect Due Investigators	688
Law IX: Further Duties of Investigators and Clerks	689
Law X: Investigations by Notaries	690
Law XI: Parties Entitled to Transcripts of Testimony	690
Law XII: Penalty for Unlawful Conduct of Investigation	690
Title XVIII: Documentary Evidence	692
Law I: Definition, Kinds, and Advantages	692
Law II: Royal Privileges and Concessions	693
Law III: Same; Authentication	694
Law IV: Documents; Form and Execution	694
Law V: Same; Material and Sealing	695
Law VI: Judicial Commissions; Form	695
Law VII: Same	696
Law VIII: Notarial Commissions; Form	696
Law IX: Instruments of Legitimation; Form	696
Law X: Exemption from Tax; Form	697
Law XI: Exemption from Tolls; Form	697
Law XII: Royal Pardons; Form	697
Law XIII: Royal Leases and Concessions; Form	698
Law XIV: Receipts for Royal Property; Form	698
Law XV: Agreements Among Nobles; Form	699

Law XVI: Contracts for Public Works; Form	699
Law XVII: Contracts for Guarding Ports; Form	700
Law XVIII: Royal Letters of Recommendation; Form	700
Law XIX: Letters of Safe Passage and Pasturage; Form	701
Law XX: Royal Letters for Removal of Prohibited Property; Form	701
Law XXI: Royal Authorization of Petitions; Form	701
Law XXII: Royal Letters to Municipal Councils	702
Law XXIII: Tax Collectors' Commissions; Form	702
Law XXIV: Royal Authorization of Investigation or Arrest; Form	702
Law XXV: Royal Letters of Safe Conduct; Form	703
Law XXVI: Such Documents Must Be Issued by King Himself	703
Law XXVII: Interpretation of Privileges and Documents	704
Law XXVIII: Same; Kinds and Effect	704
Law XXIX: Invalidity of Documents Contrary to the Faith	705
Law XXX: Invalidity of Documents Granted Contrary to Positive Law	705
Law XXXI: Invalidity of Documents Granted Contrary to Natural Law	705
Law XXXII: Same; When Inadvertently Granted	706
Law XXXIII: King May Extend Time for Payment of Debts	706
Law XXXIV: Exceptions to Rule Invalidating Documents Contrary to Law	706
Law XXXV: Invalidity of Documents by Lapse of Time, etc.	707
Law XXXVI: Invalidity of Documents Obtained by Fraud	707
Law XXXVII: Same	708
Law XXXVIII: Same; Special Cases	709
Law XXXIX: Same	709
Law XL: Documents Benefiting Several Parties May Be Used by Any	710
Law XLI: Documents Affecting Disabled Parties	710
Law XLII: Lapse of Privileges	710
Law XLIII: Forfeiture of Privileges	711
Law XLIV: Formal Requisites of Documents	711
Law XLV: Letters of General Application	712
Law XLVI: Same; Who Affected Thereby	712
Law XLVII: Letters of Special Application; Interpretation	713
Law XLVIII: Same; Effect	714
Law XLIX: Letters of Grace; Kinds	714
Law L: Same; to Prevent Harm	715
Law LI: Same; for Merit	715
Law LII: Letters Dispensing with Judicial Process	715
Law LIII: Penalty for Wrongfully Obtaining Royal Letter	716
Law LIV: Notarial Documents; Formal Requisites	716
Law LV: Same; Death of Notary	717
Law LVI: Instruments of Conveyance; Form	718
Law LVII: Bonds to Secure Sales; Form and Requisites	719
Law LVIII: Wife's Consent to Sale by Husband; Form	720
Law LIX: Instrument of Sale by Minor; Form	720
Law LX: Instrument of Conveyance by Tutor; Form	721
Law LXI: Instrument of Conveyance by Attorney In Fact; Form	722
Law LXII: Instrument of Conveyance by Executor; Form	723
Law LXIII: Instrument Conveying Church Property; Form	723
Law LXIV: Quit-Claim Instrument; Form	724
Law LXV: Instrument of Sale of Animals; Form	725
Law LXVI: Instrument of Exchange or Barter; Form	725
Law LXVII: Instrument of Donation; Form	726
Law LXVIII: Instrument of Transfer in Fief; Form	727
Law LXIX: Instrument of Lease; Form	728
Law LXX: Instrument of Loan; Form	729

Law LXXI: Same; Movables	730
Law LXXII: Instrument of Deposit; Form	731
Law LXXIII: Lease of Dwelling; Form	731
Law LXXIV: Lease of Immovables; Form	732
Law LXXV: Labor Contract; Form	732
Law LXXVI: Instrument of Hire; Beasts of Burden; Form	733
Law LXXVII: Same; Ships; Form	733
Law LXXVIII: Partnership Instrument; Form	734
Law LXXIX: Lease of Immovables on Shares; Form	734
Law LXXX: Instrument of Voluntary Partition; Form	735
Law LXXXI: Instrument of Release; Form	735
Law LXXXII: Instrument of Peace and Settlement; Form	736
Law LXXXIII: Instrument of Truce; Form	737
Law LXXXIV: Instrument of Betrothal and Dowry; Form	737
Law LXXXV: Marriage Contract; Form	738
Law LXXXVI: Instrument of Dowry	738
Law LXXXVII: Prenuptial Donation; Form	739
Law LXXXVIII: Instrument of Admission to Religious Order; Form	739
Law LXXXIX: Instrument Creating One a Retainer; Form	740
Law XC: Instrument of Emancipation of Slaves	740
Law XCI: Instrument of Adoption; Form	741
Law XCII: Same; Adopted Not Under Paternal Power; Form	741
Law XCIII: Instrument of Emancipation of Son; Form	742
Law XCIV: Appointment of Tutor; Form	742
Law XCV: Same; Mother as Tutrix; Form	743
Law XCVI: Appointment of Tutor <i>Ad Hoc</i> (To Sue); Form	743
Law XCVII: Power of Attorney to Purchase and Control Immovables	744
Law XCVIII: Power of Attorney for Municipal Council or Church; Form	744
Law XCIX: Inventory; by Tutor; Form	744
Law C: Same; by Heirs; Form	745
Law CI: Instrument Rejecting Inheritance; Form	745
Law CII: Instrument Approving Tutor's Accounts; Form	746
Law CIII: Testament; Form	746
Law CIV: Same; Codicil; Form	747
Law CV: Donation <i>Causa Mortis</i> ; by Sons; Form	748
Law CVI: Agreement for Arbitration; Form	748
Law CVII: Award; Form	749
Law CVIII: Judgment; Upon Default; Form	749
Law CIX: Final Decree; Form	750
Law CX: Judgment on Appeal; Form	750
Law CXI: Annulment of Documents; Grounds	751
Law CXII: Scrutiny of Documents by Judges Enjoined	752
Law CXIII: Partial Copy of Document Admissible	752
Law CXIV: Rules for Admissibility of Documents	753
Law CXV: Weight and Effect of Documents	754
Law CXVI: Alleged Forgery of Document; Proof	754
Law CXVII: Impeachment of Documents	755
Law CXVIII: Same; Testing Genuineness	756
Law CXIX: Private Documents	756
Law CXX: Tutor Estopped to Dispute His Inventory	757
Law CXXI: Self-Serving Documents Inadmissible	758
Title XIX: Notaries	759
Law I: Definition and Kinds	759
Law II: Qualifications	759

Law III: Appointment	760
Law IV: Examination	760
Law V: Duties; In General	761
Law VI: Same; In Drafting Legal Documents	762
Law VII: Same; Abbreviations Forbidden	762
Law VIII: Registration; Advantages	762
Law IX: Notaries of Cities and Towns; Duties	763
Law X: Loss of Documents; Replacement	763
Law XI: Same; Special Cases	764
Law XII: Renewal of Illegible Document	765
Law XIII: Compensation of Notaries; King's Court	766
Law XIV: Respect Due Notaries	766
Law XV: Municipal Notaries; Compensation	767
Law XVI: Penalty for Forgery by Notary	767
Title XX: Seals and Authentication	768
Law I: Definition and Purpose	768
Law II: Appointment of Sealers	768
Law III: Duties of Sealers	769
Law IV: Same; Errors to be Avoided	769
Law V: Compensation of Sealers, etc.	770
Law VI: Chancery; Nature and Functions	770
Law VII: Same; Fees for Privileges and Sealing	771
Law VIII: Same; Fees for Commissions	772
Law IX: Same; Fees for Letters of Arbitration	773
Law X: Same; Fees for Letter Authorizing Export	773
Law XI: Same; Fees for Various Documents	773
Law XII: Same; Fees for Accompanying Letters	774
Title XXI: Assessors	775
Law I: Advantages	775
Law II: Qualifications and Functions	775
Law III: Compensation and Punishment	776
Title XXII: Judgments	777
Law I: Definition and Requisites	777
Law II: Kinds and Advantages	777
Law III: Other Requisites	778
Law IV: Vacation and Modification	778
Law V: Form and Rendition	779
Law VI: When Need Not Be Written	780
Law VII: Upon <i>Prima Facie</i> Case	780
Law VIII: Award of Costs	781
Law IX: Rendition in Plaintiff's Absence	782
Law X: In Defendant's Absence	783
Law XI: Procedure in Doubtful Cases	783
Law XII: Grounds of Invalidity	784
Law XIII: Same; Inconsistency with Prior One	785
Law XIV: Same; Conditional or Discriminatory	785
Law XV: Same; Want of Jurisdiction	786
Law XVI: Same; Subject Matter Not Involved in Suit	786
Law XVII: In Case of Disagreement Among Judges	787
Law XVIII: Same; Status or Criminality	788
Law XIX: Force and Effect	788
Law XX: Same; Limited to Parties and Privies	789
Law XXI: Judgments Invoked by Others than Parties	791
Law XXII: Interlocutory Orders Distinguished from Judgments	792

Law XXIII: Compensation of Judges	793
Law XXIV: Penalty for Wrongful Decision; Civil Cases	793
Law XXV: Same; Criminal Cases	794
Law XXVI: Penalty for Inducing Wrongful Decision	794
Law XXVII: Recovery of Bribe by Litigant	795
Title XXIII: Appeals	796
Law I: Definition and Advantage	796
Law II: Persons Entitled to	796
Law III: By Attorneys in Fact	797
Law IV: Others Who May Appeal	797
Law V: One of Several Persons Affected May Appeal	798
Law VI: Convict's Relatives May Appeal	799
Law VII: Beneficiary Under Will May Appeal from Judgment Against Heirs	799
Law VIII: Officers May Appeal to King	799
Law IX: Appeal by Successful or Disobedient Party	800
Law X: Time for Appeal by Absent Party	801
Law XI: Same; Other Cases	801
Law XII: Effect of Unavoidable Prevention	802
Law XIII: Judgments Subject to Appeal	802
Law XIV: Appeal from Part of Judgment	803
Law XV: Appeal from Interpretation	803
Law XVI: Infamous Persons Denied Right of Appeal	804
Law XVII: Judgments of Certain Functionaries Not Subject to Appeal	804
Law XVIII: To Whom Appeal Lies	805
Law XIX: Appellate Judges in the King's Court	806
Law XX: What Appeals the King Himself Should Hear	806
Law XXI: Appeals from Deputy Judges	806
Law XXII: Procedure in Taking Appeal	807
Law XXIII: Same; Time	807
Law XXIV: Same; Festival Days Included	808
Law XXV: Second Appeal Permitted	808
Law XXVI: Conduct of Appellant and Trial Judge	808
Law XXVII: Duties of Appellant Judge; Costs	809
Law XXVIII: Effect of Party's Death Pending Appeal	809
Law XXIX: Effect of Subject Matter's Destruction Pending Appeal	810
Title XXIV: Clemency	811
Law I: Nature and Benefits	811
Law II: Who May Seek	811
Law III: How and of Whom Sought	811
Law IV: Scope of Application	811
Law V: Not a Substitute for Appeal	812
Law VI: Time of Seeking	812
Title XXV: <i>Restitutio In Integrum</i>	813
Law I: Nature and Benefits	813
Law II: Parties and Procedure	813
Law III: Jurisdiction	814
Title XXVI: Vacation of Judgments on Special Grounds	815
Law I: Deceit or Forgery	815
Law II: False Testimony	815
Law III: Conflict with Law or Custom	816
Law IV: Other Grounds for Vacation	816
Law V: Same; Irregularities	816
Title XXVII: Execution of Judgments	817
Law I: Jurisdiction	817

Law II: Mode	817
Law III: Property Subject	817
Law IV: Same; Several Judgment Debtors	818
Law V: Time	818
Law VI: Sale	819
Title XXVIII: Ownership	820
Law I: Definition and Kinds	820
Law II: Common and Exclusive	820
Law III: Instances of Common Ownership	820
Law IV: Same; Seashore	821
Law V: Same; Treasure	821
Law VI: Same; Navigable Waters	821
Law VII: Same; Trees on Banks	821
Law VIII: Same; Obstruction	822
Law IX: Other Instances	822
Law X: Exclusive Public Property	822
Law XI: Same; Property of Sovereigns	822
Law XII: Sacred Property	823
Law XIII: Same; Alienation	823
Law XIV: Same; Burial Places	823
Law XV: City Walls and Gates	823
Law XVI: Same; Rule of Romulus	824
Law XVII: Animals <i>Ferae Naturae</i>	824
Law XVIII: Right of Recaption	824
Law XIX: Loss of Ownership of Animals <i>Ferae Naturae</i>	825
Law XX: Acquisition of Enemy Property	825
Law XXI: Property in Captured Animals	825
Law XXII: Property in Bees and Their Products	826
Law XXIII: Property in Wild Birds	826
Law XXIV: Property in Domestic Fowls	826
Law XXV: Property in Domestic Quadrupeds	827
Law XXVI: Property in Alluvial Deposits	827
Law XXVII: Ownership of Islands Arising in Rivers	827
Law XXVIII: Same; When Caused by Flood	828
Law XXIX: Same; Islands Arising in Sea	828
Law XXX: Same; Other Cases	828
Law XXXI: Ownership from Alluvion	828
Law XXXII: Effect of Inundation	829
Law XXXIII: Ownership by Transformation	829
Law XXXIV: Same; Admixture	829
Law XXXV: Same	830
Law XXXVI: Effect of Labor on Other's Property	831
Law XXXVII: Same; Painting	831
Law XXXVIII: Same; Building Constructed by Another's Materials	832
Law XXXIX: Income from Property in Litigation	832
Law XL: Possessor in Bad Faith; Profits	832
Law XLI: Expenses on Property Possessed in Good Faith	833
Law XLII: Same; Possession in Bad Faith	834
Law XLIII: Improvements on Another's Land	834
Law XLIV: Same; Expenditures	834
Law XLV: Treasure Found on Another's Land	835
Law XLVI: Ownership Vests on Payment	836
Law XLVII: Effect of Lessee's Purchase of Leased Property	836
Law XLVIII: Ownership of Abandoned Property	837

Law XLIX: Same; General Rule	837
Law L: Same; Immovables	837
Title XXIX: Prescription	838
Law I: Purpose and Policy	838
Law II: Available to Whom	838
Law III: Same; Slave Excluded	838
Law IV: Movables; When Prescriptible	839
Law V: Increase of Animals; When Prescriptible	839
Law VI: Imprescriptible Property; Sacred, etc.	840
Law VII: Same; Public Property	840
Law VIII: Same; Property of Parties Under Disability	840
Law IX: Time and Requisites of Prescription for Movables	841
Law X: When Purchase is Not <i>Bona Fide</i>	841
Law XI: Same	841
Law XII: <i>Bona Fides</i> Essential to Prescription	842
Law XIII: Ownership of Property Purchased by Slave	842
Law XIV: Unconscious Prescription	843
Law XV: Defective Ownership Cured by Prescription	843
Law XVI: Taking Possession	844
Law XVII: Effect of Prescription on Pledgee	844
Law XVIII: Period of Prescription	844
Law XIX: Same; Lack of Good Faith	845
Law XX: Same; Absence of Owner	845
Law XXI: Same; Effect of Thirty Years' Possession	846
Law XXII: Same; Debts and Leased Property	846
Law XXIII: Same; Freedom of Slave	847
Law XXIV: Freeman Does Not Lose Status by Prescription	847
Law XXV: Effect of Slave Acting as Freeman	847
Law XXVI: Period of Prescription for Church Property	848
Law XXVII: Effect of Prescription on Pledgee's Rights	848
Law XXVIII: Suspension of Prescription	848
Law XXIX: Interruption or Stoppage of Prescription	849
Law XXX: Modes of Preventing Prescription	849
Title XXX: Possession	850
Law I: Nature	850
Law II: Kinds	850
Law III: Acquisition	850
Law IV: Possession by Tutors and Officials	851
Law V: Possession by Employees and Tenants	851
Law VI: Essentials of Possession	851
Law VII: Symbolical Possession	851
Law VIII: Possession Effected by Documents	852
Law IX: Loss of Possession	852
Law X: When Possession is Adverse	852
Law XI: Acquisition of Possession	852
Law XII: Presumption of Continuing Possession	853
Law XIII: Abandonment by Tenant Does Not Forfeit Possession	853
Law XIV: Ways of Losing Possession	853
Law XV: Same; Ruined Structures	854
Law XVI: Loss of Possession by Servitude	854
Law XVII: Losing Possession of Immovables	854
Law XVIII: Losing Possession of Animals <i>Ferae Naturae</i>	854
Title XXXI: Servitudes	855
Law I: Definition and Kinds	855

Law II: Urban	855
Law III: Rural	855
Law IV: Water; <i>Aqueductus</i>	856
Law V: Same; Springs	856
Law VI: Same; For Cattle	857
Law VII: Manufacture on Another's Land	857
Law VIII: Loss of Servitudes	857
Law IX: Rights of Heirs	858
Law X: Creation of Servitudes	858
Law XI: Servitudes in Property Held in Fief	858
Law XII: Servitude Inalienable Apart from Property	859
Law XIII: Property Subject to Servitude	859
Law XIV: Modes of Acquiring Servitudes	859
Law XV: Servitudes by Prescription	859
Law XVI: Same; Failure to Use	860
Law XVII: Loss of Servitudes	861
Law XVIII: Acquisition of Servitude by One of Several Common Owners	861
Law XIX: Presumption of Release	861
Law XX: Usufruct and Use; Nature and Origin	862
Law XXI: Same; Consequences	863
Law XXII: Usufructuary's Obligations	863
Law XXIII: Usufruct of Slave	863
Law XXIV: Loss of Usufruct	864
Law XXV: Same; Destruction of Subject Matter	865
Law XXVI: Duration of Municipal Usufruct	865
Law XXVII: Habitation	865
Title XXXII: Buildings	866
Law I: What Are New Buildings?	866
Law II: Prevention of Construction	867
Law III: Same; On Public Property	867
Law IV: Same; by Usufructuary	867
Law V: Same; by Holder of Servitude	868
Law VI: Purchaser's Right to Know of Prohibition	868
Law VII: New Structures for Cleaning or Repair	868
Law VIII: Effect of Prohibition Against New Building	869
Law IX: Judicial Enforcement of Prohibition; Procedure	869
Law X: Disposition of Ruined Buildings	869
Law XI: Effect of One Building Falling upon Another	870
Law XII: Removal of Walls and Trees Likely to Fall	870
Law XIII: Removal of Gutters and Obstructions Causing Damage	871
Law XIV: <i>Injuria Sine Damno</i>	871
Law XV: Remedy for Obstruction of Water-Course	872
Law XVI: Sale of Injured Property Does Not Release Liability	872
Law XVII: Liability of Several Tortfeasors	872
Law XVIII: Effect of Constructing Mill Near Another	873
Law XIX: Right to Open New Spring or Well	873
Law XX: Care and Repair of Public Property	873
Law XXI: Same; Liability of Custodians	874
Law XXII: Structures Near City Walls and Castles	874
Law XXIII: Structures on Public Squares and Streets	874
Law XXIV: Church Buildings; Care and Immunity	875
Law XXV: Reconstruction Not Compulsory	875
Law XXVI: Right of Joint Owner to Recover for Repairs	875

**HERE FOLLOWS
THE
THIRD PARTIDA
WHICH TREATS OF JUSTICE, AND HOW IT SHOULD BE
DISPENSED METHODICALLY IN EACH PLACE BY
MEANS OF JUDICIAL DECISIONS, AND ACTS FOR
THE DISPOSAL OF LAWSUITS.**

Our Lord God created all things very perfectly, by reason of His great wisdom, and after He had created them He preserved them, each in its proper place, and in doing so he manifested his great kindness and justice, and showed in what way, and how those charged with the dispensation of justice on earth, should maintain it. For just as He possessed the knowledge, the desire, and the power to render it when He desired to do so; in like manner those whose duty it is to dispense justice for him must possess three qualities. First, they must have the disposition to seek it and to love it with all their hearts, bearing in mind the benefits and advantages which this implies. Second, they must know how to render it as is suitable and the circumstances of the case demand, some with mercy, others with severity. Third, they must have the courage and the power to accomplish it, when opposed by those who desire to suppress or interfere with it. Wherefore, since in the First Partida of this book we have spoken of spiritual justice, which causes man to obtain the love of God through good will, which is the first sword by means of which the world is maintained; and, also, as we have shown in the Second Partida, which treats of great lords, whose duty it is to maintain it generally in all things with fortitude and power, which is the second temporal sword prepared for such as desire to interfere with it or destroy it by violence, arrogantly sinning against God, or injuring their temporal lord, or the land of which they are natives; so we desire in this Third Partida to speak of justice, which should be done in an orderly manner with prudence and wisdom, by each person demanding and defending in court what he believes to be his rights, before the great lords above mentioned, or the officials whose duty it is to decide in their stead. We shall also speak of all persons and things which are necessary for the perfection of judicial decisions, for, as the ancient sages said, great lords must be especially attentive to two particular occasions on each of which they should be careful to act in a proper manner; first, the time of war, of arms, and soldiers, in opposition to strong and powerful foreign enemies; second, the time of peace, law, and legal rights, in opposition to internal wrong-doers and insolent persons, acting in such a way that they may be always victorious, on the one hand, by means of strength and arms, on the other, through equity and justice. And, above all, we shall show how by means of law and justice ownership, possession, or the servitude of property and of improved and unimproved land are obtained or lost, and how buildings may be lost or obtained, by not repairing them, or keeping them up as should be done.

TITLE I.

Concerning Justice.

Justice is one of the things by means of which the world is better maintained and regulated. It is like a spring from whence all rights flow. And not only is justice employed in suits arising between plaintiffs and defendants in court, but also in all other transactions between men, whether they originate in deed or in word. And, for the reason that in the beginning of this *Third Partida* we treat of justice in general, we desire in this Title to speak of it particularly, and we shall show what justice is, of itself; what benefit arises from it; why it is so named; and how many reasons there are for its commands through which it should operate.

LAW I.

What Justice Is.

Justice is a firmly established virtue, as the ancient sages stated, which endures in the minds of all just men, and gives and equally apportions his rights to every individual. And, though men perish, nevertheless, justice itself never dies, but, on the other hand, abides forever in the hearts of living persons who are just and good. And although the Scriptures declare that a just man errs seven times every day, because, on account of the weakness of his nature, he is not able to accomplish all that he should; yet he should always be prepared in his mind to do good, and fulfill the commands of justice. And, because it is so excellent of itself, it includes all the other principal virtues, according to the saying of the wise men: for which reason they compared it to a perennial spring, possessing in itself three characteristics. First, as the water which issues from the spring pours forth toward the east, so justice always looks toward the direction where the true sun, which is God, rises, and hence the Saints in the Scriptures designated Our Lord Jesus Christ as the Sun of Justice. Second, as the water of a spring runs perpetually, and men have a greater desire to drink of it because it tastes better and is more healthy than any other; so also is justice in itself, for the reason that it is never spoiled or wasted, and those who demand it and have need of it, derive greater pleasure from it than anything else. Third, as its water is warm in winter and cold in spring, and its excellence counteracts the extremes of the seasons, so the rights protected by the administration of justice remove and antagonize the wicked and unjust deeds of men.

LAW II.

What Benefit Is Derived From Justice.

The advantages derived from justice are very great, for, where a man possesses it, it compels him to live prudently and without impropriety and error, and with moderation; and it also benefits others, for if they are good men, they become still better by reason of it, and are rewarded for the good they accomplish. Moreover, the wicked are compelled to be good through the influence of justice, from dread of the punishment which it orders to be inflicted upon them for their evil deeds. And it is the virtue by which the world is sustained, causing each one to live in peace, according to his condition, satisfied with himself, and considering himself amply supplied with what he possesses. For this reason all persons should

love justice as a father and a mother who creates and supports them, and obey her as they would a good lord whose commands they ought not to violate, and preserve her as they would their own lives, for without justice they cannot live as they should.

LAW III.

What Justice Means, and How Many Precepts She Has.

According to the precepts of the ancient sages justice means something in which are included all rights of every description whatsoever. The commands of justice and law are three in number; first, that every man should live honestly, so far as he himself is concerned; second, that he should not do wrong or injury to another; third, that he should give to each one that to which he is entitled.¹ He who complies with these precepts performs his duty to God, to himself and to the men with whom he lives, and renders and maintains justice.

¹ The conception of justice and its salutary effects set forth in Law I, is derived from the Rules of Ulpian, as given in the Pandects, "*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.*" *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.*" (Corp. Jur. Civ. Dig. I—1—10.) It is doubtful whether a more concise, comprehensive, and accurate definition of the term could be framed.

TITLE II.

Concerning the Plaintiff, and the Matters Which He Must Attend to Before Filing a Complaint.

The energy of action, according to natural laws, is the first thing which attracts others to itself. For which reason since in the preceding Title we spoke of justice, we desire here to speak of the plaintiff who comes to ask it, for he is the principal person on whose account lawsuits are instituted in which judicial decisions must subsequently be rendered.

Wherefore, we desire, in the first place, to speak of the plaintiff, and explain who is he and how he should act with regard to the party of whom he complains; what the property is which he seeks to recover, and before whom he should state his claim to it; within what time he should do this; what right or evidence he must possess in order to prove his claim, and in what way he should do so. Therefore, the plaintiff, having observed all these requirements, should know how to prove and claim his rights in a proper manner before those who have authority to dispense justice.

LAW I.

What the Word Plaintiff Means.

A plaintiff, in law, is one who brings suit in court in order to obtain his rights, either on account of a debt which is due him; or by reason of some wrong received at a former time, for which he has not received justice; or on account of his treatment at the present time affecting property which he possesses, or has some right to, which has either been taken from him or his use of it interfered with. The same rule applies to what he expects to acquire in the future, concerning which it is apparent that means are being taken to prevent him using it hereafter, or to cause him to lose it entirely.

LAW II.

A Plaintiff Should Carefully Consider Against Whom He Brings Suit.

A party desiring to bring suit against another in court should carefully consider before he begins, who the party is against whom he brings it; for he might happen to be a person whom he would not have power to sue in matters of this kind. For, where the party is his father or his grandfather who has control over him, he could not file a complaint against either of the latter, on account of the obligation of nature and the authority which he has over him, and also for the reason that they live together. We decree that the same law shall apply to those under the control of persons who have adopted them, and who stand in the position of fathers to them. Reasons exist, however, for which anyone can prosecute a claim in court against his grandfather as well as against his natural father, while still under their control, as well as against a party who has adopted him and while he is still in his power, with regard to property which is absolutely his: as, for instance, for booty obtained by knights as pay, and given by their lords in return for services rendered them, or what they secured in war through their own exertions.

The ancients established this rule for the sake of the honor of knighthood, and that men might have a desire to maintain it and not forget the performance of deeds of arms, through knowing that, in addition to the distinction and the glory which they must receive, they would derive both profit and property from this source. They established the same rule concerning what masters earned in the

schools through teaching the sciences to men, and causing them to become more learned, from which great advantages result to the country. They also declared the same rule to apply to the earnings of judges and notaries, obtained as salaries, in the courts of kings, and in cities and towns. They also granted the same exemption to the booty obtained by knights, for the sake of the honor of knighthood and because they fought against the enemy; and they, moreover, considered it just that the above-named officials—who resemble warriors and are the adversaries of those who impede the course of justice—should enjoy this exemption, for this is only another kind of a very great war which men engage in at all times. The same rule applies where a dispute arises between a father and his son, or a grandson and his grandfather involving their descent; one of them denying his relationship with the other, and refusing to give him what he has need of, where he has the power to do so. The ancient sages also decreed that where anyone of the persons aforesaid acted harshly towards the party in his power, and led him such a cruel life that he could not endure it; or advised him, or opened the way for him to commit some crime, then the latter could institute a suit against him, in order to prove the oppression to which he was subjected, and be released from his authority.

They also ordained that, where a father or grandfather, who had control over a son or grandson who was entitled to property from some other source and not through either of them, wasted or squandered said property, in a case of this kind, the party who is in the power of the other, if he was of age, could bring suit in court for its surrender to him. Where he is not of lawful age, the judge before whom such a suit is brought should select some good men, to whom no suspicion attaches, and give them the aforesaid property in charge. However, in case the father or grandfather should be in want, the rents or profits of the property should be given them, in sufficient amounts to relieve their necessities during their lives, and the balance be kept for the owner in such a way that it be not alienated or wasted, but remain in security for him to make use of, as his own, whenever it becomes necessary.

LAW III.

How a Son, or Grandson, Can Bring an Action Against His Father or Grandfather, After Being Freed From Their Power.

Sons and grandsons are sometimes freed from the power of their fathers and grandfathers, as we have shown in the Title treating of this subject. And, after they are released from their authority, if they have any complaint against those under whose control they formerly were, they have then the right to make it in court. This must, however, be done as follows, namely; before a summons is issued the persons aggrieved should state the cause of their complaint to the judge of the district, and ask his permission to summon the said parties, and he should grant it, except where he thinks that death, or loss of limb, or of reputation, may result to the superiors of the complainants whom the latter desire to bring into court.

They should not be permitted to make a complaint of this kind for two reasons: first, because they are not observing the honor and obedience to their superiors, which they are, by nature, required to do when they bring a suit of this kind against them; second, on account of the relationship which they have with them, for, where it should happen that, by reason of their complaint, the parties undergo any of the above-named misfortunes, those through whose complaint these things took place would suffer great dishonor thereby.

If, however, in addition to this, they cause them great wrong in their persons or property, they have a right, for this reason, to have them brought into court and restrained and caused to make reparation for what they have done, that they themselves receive no personal injury, nor be subjected to dishonor or contempt. Those

who have been captives and were afterwards liberated, are required to observe all the above-named matters when they desire to institute a lawsuit, or present a claim against those who have liberated them; for it is but right and proper that a slave should always have great reverence for his master who freed him from oppression and servitude, and restored him to liberty, for the ancients judged this act to be the same as if he had been made a new man.

LAW IV.

One Brother Cannot Sue Another in Court, Except in Special Cases.

One brother cannot institute a suit against another in court in a case in which the latter may be punished with death, or loss of limb, or banishment from the country; except where he does this on account of some matter which concerns himself; as, for instance, where his brother is trying to kill him, or cause him to lose a limb, or is attempting to do something else which may inflict serious dishonor upon him; or where he is desirous of unjustly depriving him of his inheritance; or on account of the death of his lord whom he may have traitorously murdered, and there is no one else to denounce him; or because of some other serious act of treason which concerns the king, or the kingdom.

LAW V.

Neither a Husband Nor a Wife Can Institute an Action in Court Against the Other Except for Special Reasons.

A husband and wife are one person whom Our Lord God united and between whom true love and perfect concord should always exist. For which reason the ancient sages considered it proper for husbands to make use of the property of their wives, and that the latter should have recourse to them for assistance, whenever it becomes necessary; and, moreover, that husbands should govern their wives, and give them whatever is suitable, in proportion to the wealth and power they possess; and that, even though one of them appropriated the property of the other neither the one deprived of it, nor his nor her heirs, has a right to institute a suit in court for its recovery, as having been taken by violence. They considered it equitable and just however, that the party should have the power to demand in court that what she or he has been deprived of unjustly, should be returned, or reparation be made for it with property of equal value. But they have no right to bring other actions against one another, such as those from which insult or evil reputation may arise, or by reason of which they may be liable to receive corporal punishment; and this for as long a time as the marriage exists, except where one of them commits adultery, or is guilty of treason against the king, or his sovereignty, for in cases such as those above mentioned, when they arise, they can institute proceedings against one another in court, in order that justice may be done.

LAW VI.

Menials and Servants Should Not Bring Their Masters Into Court, Except for Special Reasons.

No servant or menial whom a man keeps in his house, who lives on his bounty or works for the wages which he receives from him, has a right to institute proceedings in court against the person with whom he lives, or has lived, concerning any matter through which the former may suffer death, or loss of limb or reputation, or of a large portion of his property, to such an amount that he would remain poor if he should be deprived of it. Where a servant institutes

proceedings against any of the persons above mentioned, by way of an accusation, it should not avail him, and he should, moreover, suffer death on account of it; except where this is done to disclose some act of treason which concerns the king, the kingdom, or some other person connected with him, and where the party may incur the penalty of treason if he does not reveal it. This is the case for the reason that, although servants are bound to their masters with whom they live on account of the benefits which they receive from them, they are under especial obligations to the king, who is the natural lord, not only of those with whom they live, but of themselves as well, and also on account of their common nativity, and the benefits which they, as well as their lords, receive from him.

LAW VII.

When a Minor Can Be Brought Into Court Without His Guardian.

When anyone has a claim to prosecute in court against a son or grandson, who is under control of his father or grandfather, he who wishes to institute it should do so in presence of the party, having control of the said son or grandson, for he cannot do this in any other way according to law. Where, however, he who was acting as his guardian, is not in the country, the complainant should ask the judge of the district where he desires to bring an action to appoint some man to assume the guardianship of the party whom he wishes to bring into court for such time as the suit may last, that he may act as his agent in the matter, and the judge should appoint him; and then he who desires to institute proceedings can safely do so. We decree that the same rule shall apply when those persons whom we have mentioned as being under the control of others desire to make complaint in court against other parties; for when he who has any of them under his control is not in the country where it is desired to bring the suit, the son or grandson can do this himself, if he is more than twenty-five years old.¹ But where he is a minor, the judge of the district should appoint someone to be his guardian in that suit, and assist him in presenting his claim, in order that he may not be defrauded in doing so, and he can prevent it in this way, even though he under whose control he is may not be present.

LAW VIII.

A Master Cannot Bring His Slave Into Court, Nor a Slave His Master, Except for Special Reasons.

When a master has cause of complaint against his slave he should not bring him into court, but should exercise his rights over him by punishing him by reproof, or by blows, in such a way as not to kill or cripple him. But where the slave belongs to someone else, he has a right to bring suit against his master on his account, and the latter is bound to answer. For, according to law, a slave cannot appear for himself in court, for the reason that he is under the control of another, and not under his own, and, moreover, because his lord is his principal. There are, however, certain special cases, in which he can do this; as, for instance, when someone makes a will in which he orders that a certain slave of his be emancipated, and he who is directed to do this fraudulently conceals the will, in which the grant of emanci-

¹ This establishment of legal age at twenty-five years is that of the civil law, but has not been generally adopted by those nations whose jurisprudence is founded upon the latter. Under the *Forum Judicium* a minor ceased to be such at the age of fifteen. In Spain majority is fixed at twenty-three years; in France and Italy at twenty-one, which coincides with the rule of the common law, and with the statutory provisions of many states of the Union. "*Apparet minoribus annis viginti quinque eum opem polliceri: nam post hoc tempus compleri virilem vigorem constat. Et ideo hodie in hanc usque aetatem adolescentes curatorum auxilio reguntur; nec ante rei suae administratio eis committi debet quamvis bene rem suam gerentibus.*" (Corp. Jur. Civ. Dig. IV-IV-1.)—Ed.

pation was made; since in an instance of this kind, the slave has a right to bring suit in court against whoever keeps him under restraint. We, moreover, decree that where any slave has money which does not belong to his master but which he has received from some other party, and gives it to someone to be kept for him, trusting in him, with the understanding that he will purchase him of his master, and afterwards set him at liberty; and said party, after having received the money, refuses to buy him, or having bought him, is unwilling to set him free; we declare that, under circumstances of this kind, the said slave has a right to appear in court and petition the judge to compel the presence of the other party, and force him to keep the contract entered into with him. The same rule applies where a slave makes a contract with anyone to purchase him of his master, and set him free after he has repaid the money which he gave for him, and after this contract was entered into, he, having purchased the said slave, refuses to receive the money for his emancipation, or, having received it, refuses to set him free, as he had agreed to do.

LAW IX.

For What Reasons a Slave Can Bring Suit Against Others In Court.

Where a slave holds a vineyard, or a house, or a tract of land, or any other property for his lord, and anyone else interferes with him in his care of it, or deprives him of its possession, while his lord is not in that neighborhood, and therefore unable to protect his rights; in such a case the slave can institute proceedings in court against the party who committed these acts. Moreover, when his master is killed, and neither his relatives, nor anyone else, is willing to demand the punishment of the murderers, the slave then has the power to appear in court and make this demand. We also decree that if a slave commits any offense on account of which he deserves to lose a limb, or be put to death, and it is evident that he is guilty, complaint can be made against him without notifying his lord. We also decree that every slave belonging to the emperor or to the king can make complaint in court with regard to anything belonging to his lord, or which concerns himself personally. This privilege was granted to slaves of this kind in order to honor the masters to whom they belong.

LAW X.

Members of the Regular Clergy Cannot Appear in Court Without the Command of Their Superior.

When a monk, or other member of the regular clergy, contracted a debt before he entered his order, he cannot be sued for it in court; for, since he made a vow to remain in the order, he is considered the same as a man who is dead, and, for this reason, if anyone has a claim against him he should present it to his superior, for he is required to answer in court, or appoint some one who may do so, because all the property of the party complained of belongs to the monastery of which the former is the superior. This, however, is understood to refer only to an amount equal that obtained from the monk, for, just as they are glad to get his property, in like manner they should endure any inconvenience or meet any obligation which may come upon them by reason of it.

We decree that the same rule shall be observed when the king, or someone in his behalf, seizes the property of any persons on account of offenses which they have committed, and others afterwards lay claim to it for

debts which the former owed, before they committed the crime. In a case of this kind they should present their claims to the king, or to whoever holds the property for him in proportion to the amount which it was proved that the party borrowed from them. Where, however, the debt amounts to less than the value of the property, the balance will belong to the king, and if it is greater he is not bound to pay any more than the amount which he received. Moreover, we decree that where anyone has been a slave and his master has liberated him, and during the time that he was free he contracted a debt to some other man, and afterwards committed some other act for which he was returned to slavery and the ownership of him to whom he originally belonged, and anyone desires to sue him for the debt, he cannot do so but must sue his master in whose power he is.

LAW XI.

A Judge Should Appoint Some One To Answer For a Minor Who Has Not a Guardian in the Country.

No one can bring suit against a minor under twenty-five years of age, unless he who is the guardian of him and his property is present. And where it happens that a person of this kind who is to be brought into court has no guardian, the party wishing to institute proceedings against him should petition the judge of the district to appoint someone to act as his guardian, and answer for him in court, and the judge should select some good man who is a relative or a neighbor of the minor and to whom no suspicion attaches, as is stated in the Title concerning guardians, and appoint him to act as guardian in the said lawsuit, and the latter should answer for the minor, and protect his rights well and faithfully. Where a party, in any other way, institutes proceedings against a person of this kind, who is not of lawful age, and judgment is rendered against the latter, it will not be valid, but if it should be rendered to his advantage, and to the loss of the plaintiff, it will be valid.

LAW XII.

A Judge Should Appoint Someone To Answer Where Property Is Left Without Protection.

It sometimes happens that persons against whom a plaintiff desires to bring suit are in captivity, or are not in the country, or die without heirs, for which reason their property is abandoned. Wherefore, he who is desirous of instituting proceedings in a case of this kind should petition the judge of the district to appoint some one to take charge of the property of him whom he wishes to proceed against, during the suit, and the judge should do so, and this is the case because neither the owner of the property, nor anyone else for him, will appear to answer. When a custodian of this kind is appointed, he can come into court as the representative of the owner, and whatever settlement he makes, or whatever he does in his behalf justly and without fraud will be valid, just as if the owner of the property himself were present, and a claim made in any other way will be invalid. Where the property of the persons above mentioned is so large that one man alone cannot take care of it, and several custodians must be appointed, each one of them can prosecute claims in court, and answer in matters where the property of which he has charge is concerned, just as guardians of minors can do with regard to property with which they are entrusted.

LAW XIII.**Where Anyone Has a Claim Against the Council of Any Town, or a Cathedral Chapter, or a Convent, He Should Present It to Its Representatives.**

Where anyone has a legal claim against the council of a city, or a town, or the chapter of a church, or a convent of monks, such a claim cannot be prosecuted against all together, for the reason that they are many in number, but it should be done against their representative, who is appointed to answer for them, and where this is done in any other way, against any particular persons, although they belong to that community, it will not be valid; for, whatever an entire council, or chapter, or convent owes, or is required to do, this certain persons belonging to it cannot be forced to perform, although all, in a body, may be required to do so; but a debt owed by them to certain persons of any community cannot be sued for by all of the latter together but only by those to whom the claim belongs.

LAW XIV.**How Proceedings Can Be Instituted Against Other Persons Not Mentioned By the Preceding Laws.**

We have mentioned in the preceding laws all the different persons and bodies in whose cases the greatest doubt arises when proceedings are to be instituted against them in court. For this reason we spoke of them particularly, in order that those who have claims to prosecute against them, may know how to do so, and not err, or lose their rights. For plaintiffs cannot enforce their claims against the persons aforesaid, except for the reasons and in the way which we have stated in the preceding laws, but any claim may be prosecuted against all other persons, either individually, or against their representatives or those who inherit their property.

LAW XV.**What Matters a Plaintiff Should Be Aware of When He Brings His Suit.**

A plaintiff should carefully consider, not only who the party is against whom he presents a claim in court, as we have stated in those laws, but he should also be thoroughly informed as to the property which he desires to bring suit for. In the first place, he should ascertain whether it consists of immovables or movables, and afterwards decide whether he desires to claim its absolute control, or only its occupancy as a tenant, whether he wishes to claim it as his own, or merely demand its possession. Also whether he will ask damages for injury, wrong, or disgrace received in person or property, or in any other special matter where something should be paid or done; for where he desires to claim property as his own, and it is a chattel and alive, as, for instance, a slave, he should give its name, if he knows it, and whether it is male or female, young or old, black or white, and if it is a horse, or a mule, or any other animal, he should specify its kind and color. Where the property is a piece of gold or silver, or anything of this description which it is customary to weigh, he should give its weight. Where it has been fashioned by the hand of man, as, for instance, a vase, or a silver bowl, he should state the fact, and where it is in coin, he should say of what metal it is composed, and the amount of it.

Where it is wheat, barley, wine, or oil, or any other article which it is customary to measure, he should state of what nature it is, and the quantity; and if it is silk, wool, or flax to be manufactured, he should give the weight,

and if it is woven into cloth which has not been cut or sewed together, he should specify the color and the measure; as, for instance, where it is a whole piece, or a half, or a certain number of yards; and we also decree that it should be stated whether it is a piece of silk, purple cloth, crepe, or linen. And where suit is brought for cloths, which have been cut or sewed together, their names, quantity, and colors, no matter what they may be, should be given. But where a chest, or a trunk, or a bag locked or sealed, has been entrusted to anyone to keep, and the latter claims it as his own, the plaintiff is not required to state specifically what articles it contains. Where, however, a party brings suit for a chest, and desires to mention the articles which are contained therein, he has the right to do so, and the person against whom the suit is brought cannot refuse to answer, although he may say that he does not know what is in the chest. We also decree that this rule shall apply to everything else of this kind which we have mentioned specifically in this law. But where the party who sues for something which it is customary to measure or to weigh, declares under oath that he does not know, or remember exactly, the weight or the measurement of the property in dispute, the judge can receive his complaint, even though he does not state the amount with exactness, and judgment should be given for the amount proved to belong to the claimant, and for no more.

LAW XVI.

Movable Property, the Subject of Litigation, Should Be Brought Into Court.

Movable property claimed by one man of another should be brought into court, for it happens frequently that the plaintiff cannot establish his claim with certainty, or introduce testimony concerning it, if the article in dispute is not in evidence. For this reason we decree that the defendant shall be required to produce the article claimed before the judge, and in the presence of him who brings suit for it, or his representative, whether he claims it as his own property, or because it was pledged, or for the reason that he has some other special right to it. Moreover, we decree that where the plaintiff declares that a slave belonging to the defendant, or anyone else under his control, injured, wronged, or robbed him, and he does not know the name of the party, and cannot identify him without seeing him, and for this reason asks that all his household be produced by the defendant, to ascertain whether he can recognize the guilty party among their number; or where he states that any person directed by his will that he might make a selection of his slaves, or his animals, or any of the rest of his possessions of every description, and take whatever he desires, and asks the party who has control of the same, to produce it in order that he may make said selection; then, in the case of movable property of this kind, and of any other with regard to which the plaintiff declares that he cannot establish his claim, if it is not produced as aforesaid, it must then be brought into court.

We declare the same rule to apply to any precious stone belonging to some person, which another party has caused to be set in his own gold, claiming that it is his, or that he has some right to it; or where a person appropriates a wheel belonging to another for his own cart; or uses the boards of another in his own ship; or makes a cloak out of the goods of another; or mixes personal property, belonging to someone else, with his own; or commits any other act whatsoever resembling this; for then the defendant shall be required to produce it in court, if asked to do so. Where, however, a person has used beams or other lumber, or stone or lime, in building his house, he is not required to remove them thence and produce them in court at the demand of his adversary. The ancient sages considered this just, because the houses and other edifices which men build in towns not only exist for the

benefit of their owners but also contribute to the common adornment of the places where they are erected, and, when they are defaced, they, for that reason, appear the more unsightly, for they become, as it were, like places made desolate, but, whoever causes to be placed in any of his houses any of the articles above mentioned belonging to another, shall pay double their value to the owner. This rule is understood to apply when he has acted in good faith, not thinking that they belonged to someone else and that their owner would be subjected to annoyance; for, if he did this knowingly, he should pay whatever the owner estimates his damage or loss to be for what he has been deprived of, and cannot recover. And he who uses the property of another for this purpose, or his heir, shall be compelled to pay as much as the plaintiff is willing to swear to, which must be confirmed by the estimate of the judge.

LAW XVII.

What Other Property Should Be Produced in Court.

A defendant is required to produce in court a written will, or any other bequest in writing in his possession where a demand is made for it, or where the plaintiff declares that he was mentioned in said will as an heir, or that some bequest was made to him therein. Moreover, when there are many heirs, and one of them has possession of all the papers, or of the will disposing of the inheritance, and anyone of his co-heirs asks him to produce said papers because it is desired to prove something by means of them, in a case of this kind, or any other similar to it, the defendants are obliged to produce the will, or any other document, at the demand of the plaintiffs where they have it in their possession.

A vendor is also required to show to the purchaser any documents or security which he holds relating to the property sold, in order that the latter may protect himself from persons who may claim it, or may establish his title when any doubt arises with respect to the boundaries or landmarks of the same. This should also be done where one man has bound himself to another, in writing, to perform some lawful act. A person who liberates his slaves is required to give them a certificate of emancipation, which they can produce in court when it becomes necessary. And, in addition to all this, we decree that where anyone has bound himself to another by a written document which he himself has executed, he who holds said bond or contract is bound to deliver it to the other party after he has paid the debt. This also is the case where one of several partners has in his possession a list of accounts, which is the common property of all of them; or where an agent has possession of the accounts or the written conditions of a contract for which the agency was created; or where a guardian has documents relating to the affairs of a minor; or where a steward has those of his lord; or where a treasurer has any relating to the payment of money; or where he has in his possession a schedule of accounts, or of other matters, or a record of the collection of the same.

In any of the cases we have mentioned, or in others similar to them, he who holds records or instruments in writing is required to produce them in court, if their owner asks it of him, or where any other parties do so who have a lawful reason to make such a demand. Moreover, the public notaries of councils, are required to produce their registers, on the demand of all those to whom their entries relate, as is shown in the Title concerning Notaries, for they resemble servants who make records under the direction of others, and they should be trustworthy in preserving them, and in faithfully explaining them wherever it is necessary.

LAW XVIII.**What the Law Is Where Property Is Lost Without the Fault of Him Who Has It in His Possession.**

Where a bird, a beast, or a slave over which any person has control, subsequently disappears, without the party in possession being guilty of fraud or deception; or where, not being aware that a demand will be made for it, he sends it away to some point so distant that he cannot secure it as soon as he is asked to produce it in court; in a case of this kind, or in one similar to it, the person on whom the demand is made shall not be required to produce said property. Where, however, the defendant states that, although he has not possession of said property, he has some right in it, he must then give security to produce it in court, if it again comes into his possession. But where a defendant declares that he has not possession of the property in question, and does not care to take the trouble to recover it, or to protect it, even if he should recover it; we hereby decree that anyone who acts in this manner, and did not fraudulently, and through his own fault, abandon said property, is not required to answer concerning it, or to give a surety.

LAW XIX.**What Penalty Those Deserve Who Kill or Receive a Chattel, Where a Demand Is Made to Produce It in Court.**

Men sometimes act fraudulently to avoid producing in court personal property for which an action is brought against them. This is the case where one party sues another for a slave, a horse, or some other animal, and asks that it be produced before the judge, and the defendant, to avoid doing so, removes it, or kills it; or where the object of the suit, is wine, oil, or any other fluid, and he spills it or disposes of it; or where it is of metal, or any other manufactured article, he melts it, breaks it, or takes it apart, so that it does not have the same appearance which it had in the first place, in any instance such as these we have just mentioned, the party is required to pay to the plaintiff the amount that he swears he has lost through the said property being fraudulently removed, or destroyed, to avoid producing it in court.

But when the defendant produces the chattel in court in a deteriorated or damaged condition, but not entirely changed, then, if the plaintiff proves it to be his, or shows that he has any right in it by reason of which he should take possession of the same, the defendant is bound to deliver him said property, and also to pay the damage which is proved to have been caused to it through his fault or fraud.

LAW XX.**What the Law Is Where Parties Do Not Produce Property in Court, When a Demand Is Made Upon Them to Do So.**

It might easily happen that a defendant may not be able to produce property in court, at the time of the suit; but if the plaintiff insists, and proceeds with the action, this can be done afterwards before a decision is rendered. And, for the reason that in a case of this kind some doubt may arise, we declare that if at any time the defendant can produce the property for which suit is brought, he should do so. But where at the beginning of the suit, he was able to exhibit it to his adversary in the presence of the judge, and refused, alleging that he ought not to do so because he claims that the former has no right to the same, and when the judge desires to render his deci-

sion, and orders him to produce said property, or deliver it to the other party, he cannot do so, because the said property has been lost, or, being a living thing, has escaped, or died; then, if the defendant held said property in good faith, and afterwards lost control over it for any of the above-mentioned reasons, he is not required to produce it, or to pay anything on this account. But where the defendant keeps up the contention concerning the property, being aware that he has no lawful reason for doing so, we declare that he is not without blame, because he should have produced it before he lost it through death, or for any other cause whatsoever; for which reason we decree that he shall pay him who claims said chattel, as much as the latter swears it was worth, with the approval of the judge. Where, however, the defendant, whom the judge orders to produce said property, has the same in his possession, and, being obstinate, refuses to produce it, the judge can direct the magistrate of the district or neighborhood to take it from him and bring it into court.

LAW XXI.

In What Place a Defendant Is Required to Produce and Deliver Property for Which He Is Sued.

Where judgment has been rendered against a defendant through the efforts of the plaintiff, requiring him to produce the property which the latter sues for in the place where the action for its recovery was begun, he is required to do so, if the property is there. And if it should happen to be elsewhere, and the plaintiff asks that the defendant bring it to the place where the action was commenced by complaint and answer, then the judge should order the defendant to produce before him, in such a way that if any accident or misfortune happens to it on the way, while he is transporting it, the plaintiff shall be responsible. Moreover, the latter is bound to pay the expenses incurred by the defendant in bringing the property, except where the latter is a slave or an animal, in which case he is only required to furnish it food, nor is he bound to clothe the slave, for this the plaintiff should do. But if the slave, whose ownership is in dispute, knows any trade by which he can support himself, then, in this case, the plaintiff should provide for his support, for while he causes him to be brought from one place to another he prevents him from being able to gain his livelihood by his labor.

All this which we have stated applies when the defendant contends in good faith for the property for which he is sued, because of any lawful right which he may have, or does have in said property, not having removed it fraudulently elsewhere. But where, in order to commit fraud, he removes it from one place to another for the purpose of concealing it, the said defendant should then pay all the above mentioned costs incurred in its transportation. He should also prepare himself for the dangers he may encounter upon the highway while transporting the property which the judge ordered him to deliver up, or to produce in court.

LAW XXII.

Where a Defendant Has Removed Property for Which He Is Sued, He Should Say So When He Is Ordered to Produce It in Court.

Where a defendant delays to produce in court, the personal property for which he is sued, it may happen that the action will be protracted to such an extent that, in the interval, he himself, or someone else to whom he has given the property, or disposed of it, may obtain a title to the same through lapse of time, as we stated in the laws treating of this subject. For which reason we

decree that he from whom the property is claimed should produce it in the same condition in which it was when the action concerning it was begun, and this is understood to apply to the case where it was still in his possession; but where he has disposed of it, he should at once say so, in order that the plaintiff may establish his claim without prejudice to his rights. For if he does not pursue this course, and subsequently desires to produce said property, after the other party has obtained possession of it through lapse of time, the case will be the same as if he had acted obstinately, and had not produced it when the demand was made upon him, while it was in his power to do so. For which reason the judge should decide against the defendant, as we stated in the third law preceding this one, and he has legal authority to do this if he so desires, except where the defendant does not wish to profit by the advantage which gives him the property through lapse of time, from his delay to answer in court; and he is placed in the same position as he was when the suit was first begun against him; for, in this instance, the judge should proceed with the case, and has no reason to decide against the defendant because he produced the property after the period had expired by which he acquired a title to it through lapse of time. And this rule applies not only to movable property which must be produced in court, but also to the rents and profits derived from it, after the suit concerning it was commenced. But where it happens that the party who brings suit for the property had lost his title to it through lapse of time when he first made the demand for its production, the defendant is not required to produce it, for the reason that the plaintiff has no right in said property.

LAW XXIII.

What the Law Is Where a Defendant Does Not Produce Personal Property in Court When It Is Demanded.

A demand made by the plaintiff to produce personal property in court may be of such a character that the loss which he will suffer, if it is not produced, will be greater than the value of the property. This would be the case, for instance, where one person makes a demand upon another to produce a slave whom the plaintiff states to be his, for the reason that he wishes to obtain through him some real estate, or something else which had been given or bequeathed to said slave, and the defendant is unwilling to produce him, after the judge has ordered him to do so. For if, because the slave was not produced in court, he loses the property, or any rights he might gain by means of it; in a case of this kind, or in any similar one, we decree that the defendant is not only bound to pay the plaintiff what the said slave was worth, but also to indemnify him for all damages and losses, which he may swear, with the approval of the judge, that he suffered because the slave was not brought into court.

Moreover, we decree that where any person bequeaths one of his slaves to another by will, giving him the privilege of selecting him within a given time, and, afterwards he to whom the bequest was made asks that all of said slaves be produced, in order that he may make his choice, and the heir refuses to comply with this request, and the time in which the claimant had a right to the selection of the slave elapses; he who should have produced them, and was not willing to do so, shall pay the entire loss incurred by the other party because the slaves were not produced as we have above stated, for the reason that this was not done within the designated time. And we declare that this not only applies to a slave, as aforesaid, but to all other property of this description.

LAW XXIV.**What the Law Is Where a Judge Discharges a Defendant Who Is in Possession of Property.**

A judge sometimes decides in favor of a defendant, for the reason that the movable property for which he is sued is not in his possession, or because it was not lost by his fault, or through any act of fraud committed by him. If, however, the defendant is afterwards found to be in possession of it, he cannot set up the defence that a decision had been already rendered in his favor, for he was not previously released from the claim, except for the reason that he was unable to produce the property. If he should afterwards recover it in any manner whatever, he is bound to produce it just as he would have done in the first place, for every man should understand that the decision was only rendered because the property was not in his possession. But, where the judge decided that the defendant was not liable because the plaintiff had no title to the property, the former can always put up this decision as a defence for not being required to produce the same, or to answer the plaintiff, or any other person who claims it in his name.

LAW XXV.**A Plaintiff Should Designate What He Claims by Certain Marks.**

Where any person desires to claim in court, as his, a field, a vineyard, a house, or any other immovable property, he should state specifically where it is situated, and mention its landmarks and boundaries. We decree that he shall do the same thing where he claims it because he has pledged it to another and has no control over it, or for any other reason whatever for which he thinks it should be delivered to him. But the plaintiff should exercise great care when he claims the property, whether it be movable or immovable, to insert in his petition how he obtained the title to it, whether by purchase, gift, or in any other way whatever, that this may be known.

This was considered just for two reasons: first, when the nature of his claim is positively ascertained by being set forth in his petition, he can the more easily establish it afterward, and also a judgment can be rendered concerning it with more certainty; second, because if it should happen that the plaintiff does not prove the allegation which he inserted in his petition, by which he declared that the property belonged to him, he can then subsequently bring an action for it for some other reason, if he should have one, and will not be barred by the first decision rendered against him with regard to the same property, since he claims it on some other ground which has nothing to do with the first one. This is understood to refer to a case which was disposed of in the first place, for the reason that he alleged the property was his, and that it was not in his power, prior to that time, to assign another ground for his claim.

But where a plaintiff makes a general claim that the property belongs to him, but does not assign any special reason why he has the title, if judgment is rendered against him because he could not establish his title, he cannot afterwards, under any circumstances, bring suit for the said property. This is the case because where a general demand is made in this way all reasons for which property can be claimed are included therein. Where, however, a plaintiff desires to state and prove some new facts by means of which he may obtain the property after a decision has been rendered against him, or he had obtained it in the first place in any way whatsoever from a party who had the power to give or to sell it, in a case of this kind he is entitled to renew his claim.

LAW XXVI.**What Property Can Be the Subject of an Action at Law, in a General Way, Without Being Specified.**

A plaintiff should claim, and indicate specifically in court the property which he alleges to be his, as stated in the preceding laws, for in no other way can the defendant answer with certainty, or the judge render his decision. There are certain kinds of property, however, to which a plaintiff can make a claim in general terms, and not be required to indicate each article by itself; for the reason that they are of such a nature that he cannot do so, and, moreover, no great loss will result to the defendant, even if each article is not described specifically, since by means of a claim of this kind he can have certain knowledge, so as to be able to answer. This is the case where a plaintiff desires to lay claim to the property of another, either all or a portion of which he should inherit, for, in an instance of this kind, it will be sufficient for him to allege that he claims the property of such-and-such a person, which belongs to him for the reason that he is his heir, and where he makes a statement of this kind, he is not required to mention each article of said property in detail. The same rule applies, where an accounting is asked of the property of a minor, or of that of some other person which the defendant has in charge, or that of some partnership or stewardship, or with respect to some profit or loss, or injury or deterioration involving property in any of the above named cases. We decree, moreover, that where anyone claims a town, castle, village, or any other particular place, it will be sufficient for him to allege his claim to said place, by stating in detail what it is, as well as its boundaries and all its appurtenances, and there is no reason why he should specify everything else belonging to it. What we have stated in this law applies to all other similar cases.

LAW XXVII.**What Property and Possession Are, and What Difference There Is Between Them, and How They Should Be Asked For.**

Property and possession are two words between which a great distinction exists, for property means the ownership which a man has of anything, and possession means the act of holding it. And, for the reason that it is more difficult to prove the ownership of a piece of property than the mere holding of it, the ancients declared that a plaintiff will assert his claim with more prudence by demanding its possession in court, if he can prove that he is entitled to this rather than to its ownership. For which reason we decree that a plaintiff who desires to institute proceedings to obtain possession of any property should state his claim specifically, as we have declared in preceding laws he should do when he claims it as his own, for if it should happen that he cannot prove the right of possession, and desires to begin again and claim the ownership, of said property, he can do so.

Moreover, we decree that if the plaintiff has been subjected to violence, or deprived of the possession of any property belonging to him, he can then make his demand in a single claim for both possession and ownership of said property upon him who holds it. Where one party makes a demand upon another to give him possession of any property, and he who holds it, or anyone else who asserts that it is his says that there is no reason why he should deliver it to the claimant, because it is his own, or he has some right in it; or where a third party declares that the property belongs to him, in a case of this kind, the claim of the party who demands possession should be heard and decided before that of the other who claimed or asserted that the ownership

was his; except where he who claims the ownership of the property desires to prove, in the first place, that it was actually his, and produces certain evidence for that purpose, for then his claim should be heard and decided before that of the other who demands possession.

The ancient sages considered this to be just for the following reason: because though the claim of him who asserts his right to the possession preceded that of the other, the proof of his allegation would not be sufficient even if he established it by testimony, since the other party who claimed the ownership had his witnesses present, or had positive evidence to prove his case without delay, for if he did prove it, the property should be delivered to him, and the other party who claimed possession would have no standing in court.

LAW XXVIII.

What Profit a Party in Possession Derives from the Property Which He Holds.

Parties in possession of property derive great advantage from it whether they hold it lawfully or not, for although persons claiming it of them may declare that the property belongs to them, if they cannot prove their ownership those in possession can always hold it, even though they cannot show any right to do so.¹

LAW XXIX.

What He Should Do Who Holds Property in His Own Name or in That of Another, and a Suit for It Is Brought Against Him.

When a man desires to bring an action involving the possession or ownership of any property, he should bring it against the party in possession, and the latter should set up a defence and answer, except where he holds it and cares for it in the name of some other person, and will not venture, or is unwilling to go into court to defend his title. In a case of this kind he must, in presence of the judge, give the name of the party for whom he holds it, and ask for time, so that he can inform his master that a demand has been made for the property which he holds as his, and he may come and protect his title, and appear in court, and the judge should grant him time.

If he should not appear within the appointed term, and does not send anyone to answer, the judge should give him three more different periods, which he thinks to be suitable. And if he does not appear within any of them, or send someone to represent him, the judge should take the oath of the party who brings the suit, that he does not do so maliciously, and afterwards should put him in possession of the property claimed. If, after this, the other party summoned should appear, he shall not be heard, if he seeks to recover possession of the property of which he was deprived, although he still has the right to bring suit for it as his own.

LAW XXX.

A Person Deprived of Property by Force Can Bring Suit for It Against the Party Guilty of Violence, or Anyone Else Who Has Possession of It.

Where a man has been deprived of property by force, and desires afterwards to bring suit for it, he has his choice to bring his action against the

¹ The ancient maxim of the civil law; "*In pari causa conditio possidentis melior est*," has been adopted by all subsequent legal systems, and the burden of proof to establish title to property rests almost universally upon the adverse claimant. The latter, by the common law, must not only prove that his right is superior to that of the party in possession, but he must also explain in what way the title of the latter is defective. Proof of ownership, even in cases of theft, is not required of the possessor in the first place, and he is only obliged to show that he exercised good faith in the acquisition of the property in question after the owner has established his right to the same. The extraordinary advantage of the holding party has given rise to the common saying that possession is nine points of the law.—Ed.

party in possession or the other party who committed the violence, or ordered someone else to commit it, or against him who received it from the party who the latter knew had obtained it by force. We also decree that where any person fearing that he may be sued for property in his possession, transfers it to some one more powerful than himself, or who is subject to other laws, in order to make it more difficult for the person he thinks is about to sue him for the same, the plaintiff can then bring an action against the party in possession. He can, moreover, collect damages from him who disposed of it, as compensation for the injury resulting to him from the transfer. Where, however, he does not desire to sue the party in possession he can demand the value of the property of the person who disposed of it; but after he has received the amount we have mentioned from the person who sold the property he cannot sue the party in possession.

LAW XXXI.

Where a Party Asks Compensation in Damages, He Should State the Amount Asked, as Well as the Wrong Sustained by Him.

Where one man asks damages of another for wrong, dishonor, or injury done to him or his property, or to another party in whose name he has authority to make the demand, if the dishonor was done by speech, as, for instance, where the party insulted him, or advised another man or the slave of another party to do so, or said anything from which injury or dishonor might result to any person with whom he lives; in a case of this kind the plaintiff must set out the insulting speech uttered by the other party, or the evil counsel, or the directions which he gave to his dependent. He should also state the compensation which he asks to be made, in order that the judge may determine whether the speech is of such a character as to bring him into contempt, or cause him injury, for which the other party who uttered it deserves punishment. And where the dishonor or injury done him was committed on his body, as where he was struck, wounded, or imprisoned; or where his property, or beasts of burden or cattle were taken from him by force; or where his trees were cut down; or where some other injury was inflicted upon him, we decree that in a case of this kind the plaintiff should state the facts as they took place, and where this is proved in this way to the court, his claim should be allowed. Where he does not state the facts in this manner, the defendant is not required to answer, since the claim for damages cannot be exactly ascertained, nor can the judge, under any other circumstances, render a certain decision.

LAW XXXII.

Before Whom a Plaintiff Should Bring Suit, in Order for the Defendant to Answer.

We desire to show here before whom a plaintiff should make his claim in court, for the reason that it is one of the things to which especial attention should be paid before it is done. Wherefore we declare that the ancient sages, who made the laws, considered it just that when a plaintiff desired to assert his claim he should do so in the presence of a judge who has jurisdiction over the defendant, for he would not be required to answer before another judge, except concerning the matters herein enumerated, and which we shall proceed to mention. First, where the defendant is a native of the country over which the judge before whom the claim desired to be established has jurisdiction; for even though the defendant may not be a resident of said country, if he is found there, he can be compelled to answer by reason of his being a native.

Second, on account of emancipation, for an enfranchised person is required to answer before the judge within whose jurisdiction he who emancipated him has his residence, or in any other locality where he who set him free was born. Third, by reason of marriage, for a wife, although she may be a native of another country, must answer before the judge who has jurisdiction over her husband. Fourth, because of knighthood, for a knight who receives pay or holds a fief of his lord, can be required to answer before a judge of the country where he lives, by reason of the obligation of his knighthood. Fifth, on account of landed property which a person holds in the country, and to which a claim is made. Sixth, when the defendant, or anyone else whose heir he is, has entered into a contract, or made a promise to perform some act within the jurisdiction of the judge before whom suit is brought, or has entered into a contract or made a promise elsewhere, and has the power to carry it out there; for although he may not be a resident of that locality, he is required to answer before the judge, for any of the reasons aforesaid. Seventh, if he has been a resident of the country where the suit is brought for ten years. Eighth, where the greater part of his property is situated in that country, although he may not have lived there for ten years. Ninth, when the defendant, of his own free will, answers before a judge that has no power to compel him, for in that case, he will be required to proceed with the case, just as if he was a native of that country over which the judge has jurisdiction. Tenth, on account of some offense or crime which he has committed in the country, for where a suit is instituted against him on this account, he is required to answer where the crime was committed, even though he may be a native or resident of some other country. Eleventh, where the defendant is seditious, or a spendthrift, so that he does not remain quiet anywhere, for a person of this kind is required to answer wherever he is found. Where, however, he can give sureties who will bind themselves to produce him in one of the following three places selected by the plaintiff, namely: where the defendant has his dwelling, or where the contract or agreement was entered into, or where he promised to carry it out; then a judge who has no jurisdiction over him should not compel him to answer; but if he is unwilling, or unable to give security of this kind, he can be compelled to appear before the judge wherever he may be found. Twelfth, when a slave, or animal, or any other personal property, is claimed by a party as his own; for he of whom it is claimed must answer wherever he was found in possession of it, although he may belong to another country. If, however, the party against whom such a claim was made, is a man above suspicion, and desires to give security to appear in court, in the matter of the property claimed of him, and his sureties agree to produce him at the appointed time, he should be left in possession of said property and if he cannot give security of this kind, he should deposit the property in the hands of some trustworthy person. The judge should decide the case in which the property is in question as soon as he can, so that the defendant may not suffer much inconvenience or delay. Where the defendant happens to be a suspected person, who may have obtained the property by theft or robbery, he should be kept in custody until it is shown whether he has any right to the same, or whether he is guilty or not. Thirteenth, where the defendant desires to bring a suit of some kind against the party making the claim; for, after he has answered, the other party is bound to answer him in his turn, and he cannot avoid doing so although he may say it is not in the jurisdiction of the judge before whom the suit is brought. The wise men decided this to be reasonable, since, as the plaintiff chose to begin proceedings before that judge, he should also be required to answer before him. Fourteenth, when a man has in his care the property of an orphan or an insane person; or that of one who has lost his memory; or of that of a lord by reason of stewardship; or, as a teacher or

guardian his charge of money, or of mines; or is a keeper of forest or pastures; in cases of this kind he is required to answer, and to render an account of any of these matters, or of others like them, where he makes use of property by reason of the office which he holds.

LAW XXXIII.

At What Time a Plaintiff Should Not Bring Suit.

A plaintiff must pay strict attention to the time when he brings his suit, for if he does not do so, he may make a great mistake. For this reason he should be careful not to bring it on prohibited days, which are called festivals, so that he will not be able to prosecute his claims in court. There are three kinds of these: the first and most important is that which should be kept through reverence of God and the Saints; the second, on account of the honor of emperors, kings, and other great lords; the third, for the common benefit of all, as, for instance, days on which crops are gathered and wine made. We shall show how each one of these should be observed.

LAW XXXIV.

What Days Should Be Observed on Which Suit Should Not Be Brought for the Honor of God and the Saints.

Christmas, Easter, and Pentecost are three very important festivals, upon which all Christians should carefully avoid bringing suits in court. The Holy Fathers who established the regulations of the Holy Church considered it proper that not only these days should be observed, but also seven days after Christmas, and seven before, and seven after Easter, and three days after Pentecost. Moreover, they ordered the day of the festival of the Annunciation to be observed, as well as Ascension Day, and the four festivals of St. Mary, and those of the Apostles, and of Saint John the Baptist, and also Sundays. All of these days should be kept in honor of God and the Saints, so that no man ought, on them to institute legal proceedings against another, and if a suit should be brought or decided on any of these days, the proceedings will not be valid, although the acts were performed with the consent of both parties.¹

LAW XXXV.

What Matters Can Be Determined on the Days Above Mentioned.

A judge can appoint guardians for minors on the festivals mentioned in the preceding law, and he also has the power to remove them if they are liable to suspicion. He can also hear those who have the care of minors, if they desire to be discharged, where they give some lawful reason for no longer holding office. He can also hear suits instituted to obtain support which a minor demands of his guardian; or where one guardian sues another in the name of a minor; or a father sues his son, or a son his father; or an emancipated slave him who liberated him, or the latter an enfranchised slave; when this is necessary; and also where a widow, pregnant by her husband, makes application to be placed in possession of property on account of her unborn

¹ The provision regarding festivals set forth here corresponds in its general features with that of the Visigothic Code. For, Jud. II-1-10. The laws of England were formerly very strict in this matter, and by Stat. 29, Car. II-7 worldly business was prohibited on the Lord's Day, as well as arrests from all offences except treason, perjury, and breach of the peace. These restrictions were made still more severe by the well-known "blue laws" of New England. In recent times, however, the rule has been greatly relaxed, and even in Catholic countries Sunday is no longer absolutely considered *dies non*, so far as the execution of contracts and the service of process are concerned. The ancient maxim was: "*Dies Dominicus non est juridicus*."—Ed.

child; or where anyone is compelled to prove that he is a minor, or of age; or where the action is one in which either liberty or slavery is involved, or a suit concerning a will, which someone, who has the right to do so, asks may be opened or produced in court; or where any person, who is the debtor of another, dies without heirs, and his property remains unprotected, and the party to whom the debt is due petitions the judge to put him in possession of the same for its preservation, or to give it in charge of some one else, so that it may not be lost or depreciated in value.

In any one of the instances aforesaid, a plaintiff can bring an action on any of the above-named festivals, and whatever is done then will be valid, for proceedings of this kind are among works of piety. We also decree that every suit pertaining to the common benefit of the people; or to establish peace or a truce among men, or an institution of knighthood for the protection of the country; or for the punishment of public robbers who infest the highways, and of traitors, can be heard and decided by judges; for, as the ancient sages stated, he is a friend of God who puts to death an enemy of God, at any time whatever. Moreover, emperors, and other wise men who made laws, deemed it proper that men could work upon the above-named days, and sow or reap the fruits of the earth, if there was urgent necessity for it. There are two reasons for this: first, because work of this kind enures to the common benefit of all; second, for the reason that it frequently happens that the weather is more favorable on these days to perform the labor necessary to cause the earth to yield its fruits, than it is on others, and where this is not done at that time it may happen that afterwards, when they propose to perform such labor, it cannot be done.

LAW XXXVI.

Concerning the Festivals Which Kings and Emperors Have Authority to Establish.

In addition to those above mentioned, other days established by emperors, kings, and other great lords on account of things which then happened to them, are called festivals, as, for instance, birthdays; or a day on which one of them achieved great success against his enemies; or when he created his son a knight; or when he himself, or one of his daughters was married; or any other day on which any remarkable event similar to these occurred. On any day which he appointed to be a holiday, for any of the reasons aforesaid, no man in his dominions should summon another, or institute legal proceedings against him, for the reason that it is proper that the festivals which he established for any of these reasons in honor of himself or his country, should be observed, in order that happiness may not be interefered with, or men be oppressed by suits or claims brought against one another.

LAW XXXVII.

Concerning Holidays Appointed for the Common Benefit of the People.

Wheat and grapes are the fruits of the earth from which men derive most benefit, and for this reason, in ancient times, other holidays were appointed on which they might be gathered. These include two months, and because the fruits of the earth do not ripen at the same time, since certain regions are cold and others warm by nature, the months to be observed in this manner, are not designated with exactness. For this reason they deemed it proper, and decreed, that the judges of every district, should set apart these two months, according to the customs of the country, at the times when wheat and grapes

are gathered, and that as long as they lasted, no man should serve a writ upon another during that period, except in the special cases mentioned in the third law before this; or where a dispute arises between certain parties on these days, concerning the fruits to be gathered; for, in controversies of this description, men can institute legal proceedings against one another. The judge before whom suits of this kind are brought, must, however, hear and determine them without quibbling, or protracted delay, in order that the fruits may not be lost before the dispute between the parties is decided.

LAW XXXVIII.

On What Festivals a Plaintiff Can State His Claim Where His Adversary Consents.

Where a plaintiff and a defendant agree with one another, to come into court on the festivals which we mentioned in a former law, and which have been set apart for the purpose of gathering wheat and grapes, they can do so if the judge, of his own free will, desires to hear them, and all the proceedings which take place on these days will be as valid as if they were not festivals. We also decree that where any person has a right to any property belonging to him, and is afraid that the said right will be lost by lapse of time if he does not assert his claim to it on the festivals set apart for the harvest and vintage, he has the right to institute proceedings in a matter of this kind, and the judge is bound to hear it, until the suit has been formally begun by the filing of an answer; so that the rights of the plaintiff may be protected and not lost on account of time running against him. But, after issue has been joined by the filing of an answer, the judge should not consent for the parties to conduct the suit before him upon those days, but should appoint a time in which they may prosecute it after the said holidays are over.

LAW XXXIX.

A Plaintiff Should Be Careful Before He Brings His Suit That He Has the Means to Prove It.

A plaintiff should be diligent and shrewd in determining whether he has the power to prove his allegations, for it is always necessary to prove a claim in court if the other party denies it. This proof must be established either by witnesses, or by written documents, or in some other credible manner; for, if the party was not certain of this before he began his suit, what he thought would be to his advantage will cause him injury and disgrace; for he will have to pay all the costs to the defendant, and will also be considered a person of little intelligence for commencing an action without knowing beforehand upon what ground he based his claim.

LAW XL.

In What Way a Plaintiff Should State His Case.

Libellus, means, in Latin, a demand made in writing, and this is one of the ways in which a claim may be stated, and the other is orally. The one made in writing is, however, more certain, for the reason that it cannot be changed or denied like the other. But a claim of any kind whatever, to be stated according to law, must contain five things; first, the name of the judge before whom it should be prosecuted; second, the name of the party who makes it; third, the name of him against whom it is made; fourth, the nature

of the property, or the amount of money claimed, or the act which should be performed; fifth, the reason for which it is asked; for where all these matters are included in the claim, the defendant can ascertain by means of them in what way he should answer. Moreover, the plaintiff will know more clearly what he has to prove, and the judge will also obtain information so that he can proceed with the case according to law.

And, although what has been above stated is amply sufficient for men who are intelligent, for the reason that there are many others who are not familiar with these matters, we desire to explain the exact way in which a claim should be stated in writing or orally. This is as follows, to-wit; when a plaintiff goes before a judge he should say: "Before, you, So-and-So, Judge of such-and-such a district, I such-and-such a man, make complaint to you of So-and-So, who owes me a certain number of maravedis which I lent him; wherefore I petition you, to order him, by your decision, to pay them to me." All other demands made in court should be presented in this form, the statements being changed according to the nature of the property claimed.

LAW XLI.

With Regard to What Property It Is Not Necessary to Reduce a Claim to Writing.

The ancients ordained that every claim for a sum above ten maravedis, or for any property of that value, should be reduced to writing, but under that amount the claimant was not obliged to reduce it to writing, if he did not desire to do so; but it was sufficient if he stated orally before the judge, the defendant being present, what his claim was, and why he made it, as above mentioned. They made this rule in order that insignificant lawsuits might be decided more quickly, and without great expense.

We also, decree that if he, against whom the action is brought, is not permanently established in the country, he who wishes to prosecute the claim may demand a surety for his appearance and he should be compelled to swear that he will remain in court until the case has been decided. After the judge has heard the claim of the plaintiff, he must state it to the defendant, and appoint a time within which he later can take advice, and answer.

LAW XLII.

In How Many Different Ways Plaintiffs Insert More in Their Claims Than They Should.

Plaintiffs sometimes insert more in their claims than they should, and they ought to be very careful to avoid doing so, for the reason that it is greatly to their injury, and not at all to their benefit. There are four ways in which they may do this; first, when anyone inserts in his claim a larger sum than that due him, as, for instance, where ten maravedis are owing to him and he claims twenty, or some amount like this. Second, when he states his claim in a way which he should not do, as, for instance, where he has the right to receive one of two things, according to the choice of the debtor, and he himself specifies which one should be given him; and hence the sages declared that this was excessive, because it deprived the other party of its choice, as he had the power to give him whichever of the two things he wished. Third, when he presents his claim at an improper time, as when he demands payment before the date when the money is due. Fourth, when he demands payment at a place where the defendant is not required to make it; as where it was inserted

in a contract that it should be made in one place, and he asks that it be made in another. We shall speak of each of these four ways fully hereafter.

LAW XLIII.

For What Damages a Plaintiff Is Liable for Inserting in His Claim More Than Is Due Him.

Plaintiffs sometimes insert more in their claims than they should, so that they cannot afterwards establish or prove all that they claim, and for the reason that some allege that he who cannot prove everything included in his claim should lose it, therefore we, being of the opinion that the ancient sages judged rightly in this matter, decree that although the plaintiff may not prove as much as he claims whatever he does prove shall be valid, and that the judge must decide against the defendant to the extent that evidence was produced against him, and, moreover, judgment be rendered in his favor with regard to such matters as were not proved. Where, however, the defendant incurs any costs or expenses by reason of an excessive claim made against him, we deem it proper, and we direct that the plaintiff pay him all such costs and expenses.

LAW XLIV.

What Damage Results to Him who Fraudulently Makes His Debtor Liable for More Than He Owes Him.

Some men make deceitful speeches to others, in order to render them liable in writing, or through witnesses, for more than they owe them. And, then, after they have cheated them in this way, they bring them into court to demand of them that for which they made them liable. And, for the reason that fraudulent transactions should be annulled by law, we decree that if a defendant can prove and establish fraud, the plaintiff shall lose, on this account, not only the genuine debt, but also the amount which was maliciously increased in the document or contract made before witnesses. There are two reasons for this: first, on account of the deception which the plaintiff committed against the defendant in the contract relating to the debt; second, because being well aware that he had acted maliciously, he ventured to demand it of him in court, thinking that he could also deceive the judge by means of his document, or evidence which he had against his debtor. Where, however, the plaintiff, before he comes into court desires to free himself from the fraud which he has committed, and considers himself to be fully paid by the amount of the genuine debt, he can do so, and not be liable to any penalty on this account.

LAW XLV.

What Disadvantage May Result to a Plaintiff, Where He Claims Payment for a Debt in a Place Where It Should Not Be Made.

Men sometimes indicate to others certain places or times in which they promise to pay money or to perform some act, and it afterwards happens that the demand is made upon them to do this elsewhere. In a case of this kind we decree that a plaintiff must pay the defendant three times the amount of the damage or loss which he has sustained, by reason of the demand having been made upon him in a place where it should not have been done. The same rule applies when a plaintiff presents his claim in a different way from what he should; as, for instance, where his debtor had the choice to give him one of

two things, and the plaintiff demanded whichever he himself desired, not mentioning the other, as above stated. We also decree that a plaintiff shall not be heard when he claims payment of a debt owing to him before the time when it should be paid. The judge, by way of penalty, has the right to double the time called for by the contract, where a claim is made for payment before the time when it should be done, and he can, in addition, compel the plaintiff to pay the costs and expenses incurred by the defendant for this reason.

LAW XLVI.

No Man Should Be Compelled to Present His Claim if He Does Not Desire to Do So, Except in Special Cases.

No man should be compelled to present his claim to another, but he ought to do this of his own free will, if he so desires, except in special cases when the judge can legally compel him to do so. One of these is where anyone goes about praising himself, and declaring that another person is his slave, or villifying him, by speaking of him in public. In cases of this description or similar ones, he who is abused in this way can go before the judge of the district and ask that the party who has made these speeches be compelled to prove his statements in court, or retract them, or make reparation in some other manner, which the judge thinks to be proper. Where the offender is obstinate, and refuses to prove his statements in court, after the judge has ordered him to do so, we decree that the other party shall be forever free from liability to him, so that neither he, nor anyone else in his behalf, can ever assert any claim against him in a matter of this kind; and we also decree that if, afterwards, he should repeat any of the malicious statements which he had previously made against the said party, the judge must punish him for it, so that no one else will venture to defame or speak ill of persons wrongfully.

LAW XLVII.

Judges Should Compel Certain Men to Present Their Claims Against Those Who Wish to Travel.

Some men lie in wait for others maliciously, through envy or dislike which they entertain towards them. They act in this way against traders and other persons, who are compelled to make voyages by sea or land, for, as soon as they learn that they have their merchandise and property ready so that they can depart, they maliciously begin lawsuits against them, to prevent them from leaving the country at the time when they should do so. Wherefore we decree that judges shall not suffer malevolence and fraud of this description to prevail, when they are informed of it. In order to restrain persons from committing wickedness of this kind, we direct that any trader, or other person who is apprehensive of such treatment, can petition the judge to compel the party plotting against him to present his claim at once, and not to defer doing so until the time when he desires to depart, and the judge should do this. For if the plaintiff is not then willing to institute legal proceedings, he should not afterwards be heard until the defendant has returned from his voyage.

TITLE III.

Concerning Defendants, and What Things They Should Carefully Consider.

A defendant is one against whom any of the claims which we mentioned in the preceding Title is presented in court. Wherefore, since we explained the matters to which a plaintiff should pay attention, before he begins to prosecute his claim in court, it is proper that we now speak of the defendant. We shall also show what things he is bound to consider in order to avoid making mistakes, and to defend himself from the claim made against him. Therefore, we decree that the same things above mentioned, which a plaintiff must carefully consider before he begins proceedings, the defendant should also thoroughly investigate before he answers. For just as a plaintiff should know who he is against whom he desires to bring suit, so, on the other hand, a defendant should be acquainted with the person who desires to do this. He should also carefully examine the nature of the claim, and ascertain before whom the suit is brought, and when this was done, and, moreover, what evidence he has, by which he can protect himself against the demands of the plaintiff, and, above all, he should diligently consider in what way the claim is made, in order that he may the better know how to answer, and set up a defense, and allege that he is not required to answer in the action brought against him.

LAW I.

The Defendant Should Carefully Consider Before He Answers Who the Party Is That Brings the Suit.

The standing of the party who brings the suit is a matter to which the defendant should pay great attention before he answers in court, and for this reason he should, in the first place, ask the plaintiff if he brings the suit for himself, or in behalf of someone else. Where he replies that he brings it for another, the defendant is not required to answer, unless he is shown a power of attorney, which is genuine, or is given security that he in whose name the suit was brought will confirm it, as the laws of this book direct in the Title treating of Attorneys. He should also ascertain whether the party bringing the suit does so in the name of certain minors; for in this instance he is not bound to answer unless the former produces evidence to show how those minors for whom he acts were placed under his guardianship, and he who exhibits such authority must cause it to be reduced to writing, so that, his right to appear may not be denied, and, when this is complied with, whatever is done in the case will always be valid.

Where he who brings a suit states that he does it for himself and not for another, the defendant should inquire whether the plaintiff is such a person as can meet him in court, for, if he should not be, he is not required to answer him. This would be the case where the plaintiff is under twenty-five years of age, and brought suit without his guardian or protector, or where he is a slave or some other person whom we mentioned in the Title concerning Plaintiffs, who have no right to appear in court in their own behalf.

LAW II.

What Inquiry the Defendant Should Make When the Plaintiff Sues Him for Property He Claims to Be His Own.

Where a plaintiff brings suit for property claimed as his own, the defendant should carefully inquire who it is that makes the claim, in order that he

may not engage in a lawsuit for the property if it is not in his possession. For if he should answer that he holds it, when it is not in his possession, and the plaintiff, believing that this was true, prosecutes the suit, and proves that the property claimed is his, the defendant will then be bound to pay to the plaintiff the amount that he will swear that the property for which he obtained judgment was worth. This is the case for the reason that he did not know enough to avoid telling a lie to his own injury.

An appraisement of the property in question should be made by the judge, before the plaintiff is sworn, but where the latter knows positively that the defendant answered falsely when he stated that the property claimed was in his possession when it was not, although he may afterwards prove that it was his own; if the defendant repents of what he had acknowledged, by declaring afterwards, before final judgment is rendered in the suit, that he was not the possessor of said property at the time when he stated that he was, nor is so now when he makes this statement, he should be entitled to said property, and the plaintiff should not derive any advantage from what he has proved; for the reason that he prosecuted the suit maliciously and deceived himself, since he was perfectly aware that the defendant was not the possessor of the property which he had acknowledged to be under his control.

LAW III.

To What Penalty a Defendant Is Liable, Who Denies in Court the Possession of Property Which He Holds.

Where a defendant denies in court that he has possession of property which another party claims as his own, if it should afterwards be established that he had possession of it, he must deliver it to the plaintiff, although the latter may not have proved that it belonged to him. Where, however, the defendant, after he has given the plaintiff possession of the property, desires to claim its ownership stating that it is his, he has the right to do so; and if he proves this, it must be delivered to him, and, if not, it should remain in possession of the other party to whom it was surrendered, and for this reason the defendant must be very careful not to tell a falsehood in court. We also decree, that he should inquire whether the property for which suit is brought is a chattel; or whether the possession and ownership are claimed together, or the ownership alone; or whether a debt is sued for; or damages for an injury, or a wrong, or for some dishonorable act which has been committed; in order that the claim may be made definitely with regard to the matter in question, so that he may ascertain if he can protect himself, and should proceed with the lawsuit, or not. In each of these instances the party sued should be diligent in making inquiry concerning all the matters we have mentioned above which may be to his advantage, just as the plaintiff should inquire into them in order to profit by them with respect to his claim.

LAW IV.

A Defendant Is Bound to Answer in Court Only Before His Own Judge, Except in Special Cases.

A defendant is not required to answer before any other judge except the one appointed to preside in the country where he constantly resides, excepting in the cases which we have mentioned above in the laws which treat of the plaintiff, where matters of this kind are concerned. Nevertheless, he is bound to answer before the king, in every case, if he can be found in the court, and he cannot avoid doing so by stating that this suit had never been brought before his own judge, nor can he do this for any similar reason. This is the

rule because the Court of the King is the place where the common law of all is dispensed, and no one can avoid appearing there. When, however, the defendant goes to court for the purpose of accompanying his lord, whom he is bound to protect, or goes there by his order, or by that of his council, or to be a witness in a suit in which he is summoned, or to prosecute an appeal, or if the king should summon him for some business which he had to transact with him, he will not be required to answer in any suit brought against him at that time, if he had not previously returned to his home. But although he can avoid answering there for this reason, he should promise the king that he will appear before the judge of his district, to answer the claims presented to him at court. Where, however, the defendant has come to court for any of the above named reasons, and, while there, sells or purchases anything, or enters into any contract whatsoever, or is guilty of wrong, violence, injury, or any other offense, he is bound to answer for it there, if suit be brought against him.

We also decree that if he who visits the court for any of the reasons aforesaid, desires, while there, to institute legal proceedings against another party, and he, against whom he does this, in turn, sues him to compel him to do him justice in some other matter; before final judgment has been rendered in the first case, the party is bound to answer in a suit of this kind, except where the prior action was instituted on account of theft, injury, or dishonor, which the plaintiff suffered while there, for while the first suit growing out of any of the above-mentioned matters, is pending, a second cannot be brought against him there, and if this should be done he will not be bound to answer. This is the rule because the plaintiff asks for damages for a wrong done him in that place.

LAW V.

In What Suits Defendants Are Required to Answer Before the King, Although They May Not Previously Have Been Sued by Their Own Fueros.

There are certain controversies and actions, in addition to those which we mentioned in the preceding law, which are of such a character that according to the laws of Spain, defendants are required to answer in them in the presence of the king, although they have not been previously sued according to their own fueros. These are as follows, namely: damage to a highway; violation of a truce; a challenge involving certain death; the rape of a woman; the case of a notorious thief, or of a man outlawed by some council, or by order of judges who have jurisdiction over the country; counterfeiting the seal of the king, or his money, or debasing gold, silver, or any metal; or on account of any other great act of treason attempted to be done against the king or the kingdom; or where a lawsuit is brought by a minor, or a poor man, or one in great affliction, against some powerful person, in which justice cannot be obtained by the laws of the land. For any of these reasons a defendant is required to answer before the king wherever he is summoned; and he cannot avoid doing so under any pretext, because suits of this kind affect the king chiefly on account of his sovereignty, and, moreover, because when acts of this kind are not punished, injury to the king and to all the country in common is the result.

LAW VI.

A Defendant Should Carefully Consider at What Time Suit Was Brought Against Him, and What Defense He Can Set Up Against It.

A defendant should be very careful before he answers in a suit brought against him, to investigate at what time this was done, for if it happened on a holiday he will not be required to answer the claims set up in it, except con-

cerning such matters as we have previously mentioned when treating of festival days. Where the day is one when he should answer, the claim made against him ought to be reduced to writing, and he should have a term of three days in which to take advice, and examine all the evidence which may be at his disposal either in writing, or in the testimony of witnesses, and to exercise any other right of which he may avail himself against the claim for which he is sued.

LAW VII.

In What Way a Defendant Should Answer in a Suit Brought Against Him.

All the matters which we have mentioned above having been considered, the defendant should afterwards answer in the following manner; that is, by simply admitting the claim which is presented, if he is certain that he truly owes it, for, if he denies it, and it should afterwards be proved, he will suffer injury and disgrace by being compelled to pay what was claimed, and the cost and expenses besides, to the party who gained the suit. When he, at once, admits what he owes, the judge should order him to pay the amount confessed to be due within ten days (or some longer period, as he thinks proper) within which time the party can obey the order. If he ascertains that the claim presented is not a genuine one, he should simply refuse to admit it, saying that the allegations made are not true, and he should not grant them, or comply with what they ask. After the defendant has answered in this manner the claim against him, the issue is considered joined by complaint and answer, called in Latin, *Lis contestata*, which means a verbal contest.

LAW VIII.

How Defendants Sometimes Admit the Allegations Made Against Them by Setting Up Defenses.

Defendants sometimes admit the allegations made against them in court, but they, at the same time, set up defenses, as, for instance, that they have paid or performed what is demanded of them, or allege that the plaintiffs have sued them for something which they have never claimed to be due. For which reason we decree that, in these and other similar cases, the judge shall appoint a certain time for the defendant within which to establish the defence which he has made; and if he does establish it, he should release him from all liability for the claim, and compel the plaintiff to pay the costs which the defendant has made in the case, and where he is not able to prove his defense within the time assigned he must decide in favor of the plaintiff. In addition to this, we direct that if the judge should ascertain that the defendant has maliciously set up a defence in order to protract the suit, he must compel him to pay the costs and expenses incurred by the plaintiff in the prosecution of the case, on account of its being protracted in this manner.

LAW IX.

By Means of What Defenses a Defendant Can Avoid Answering in a Suit.

Defendants sometimes in making defences in suits brought against them do so in such a way as to prolong the suits and not bring them to a termination, and these are called in Latin, dilatory pleas, which means such as cause delay and they are of the following description: for instance, where a party makes an agreement with his debtor not to pay him the maravedis, or whatever he owes him, until a certain time or an appointed day, and afterwards brings suit against him before the said time has elapsed; or where someone is summoned before a judge within whose jurisdiction he does not live; or where one

party opposes the agency of another, giving reasons why he should not act as attorney, or stating that he was not appointed according to law, and for this reason he is not required to answer in the suit brought against him; for defences of this character, or similar ones made by a defendant, and proved before he answers, should be sufficient. If, however, after issue has been joined by answer he should desire to interpose some defence, it should not be considered. We also decree that where a judge ascertains that a defendant is in the habit of maliciously setting up defences, for the purpose of protracting lawsuits, he may peremptorily assign a stated time when the defendant must make all his defences at once, and prove them, and if he does not prove them within the designated time, or does not make them, he should not afterwards be heard, but the judge should proceed with the case as the laws of this book direct.

LAW X.

On Account of What Defences Defendants Cannot Avoid Answering in an Action at Law.

Defendants sometimes interpose defences before answering in a suit, declaring that they should not answer because those who bring it are their slaves. This is also the case when a party sues for an inheritance from his father, and the defendant alleges that he is not bound to answer, and denies that the plaintiff is the father of the person on account of whom he brings the suit; or where it happens that someone asks for a bequest which he claims was made to him in a will, and the defendant alleges that he is not required to answer, for the reason that the will was forged. Wherefore, we decree that a judge should not stop for defences of this kind or others like them, interposed by defendants to avoid answering, but should proceed with the original case; and we declare that, on the other hand, he should compel the defendant to answer either affirmatively or negatively, the allegations which are made. After he has answered, the judge should receive those defences and proceed with them along with the original case, and, where he finds that they are true, he should decide in favor of the defendant with respect to all claims made against him; and if they are found to be false, and the plaintiff proves his case as originally stated, he must give judgment against the defendant, and tax the costs to him which were made by the plaintiff in the suit, as above stated.

LAW XI.

By Means of What Defences a Defendant Can Impede the Original Suit, Until They Are Decided.

Defendants interpose defences, not only before issue is joined by answer, as we stated in the preceding law, but also subsequently. This is the case when some one is brought to testify against the defendant, in order to prove the allegations made by the plaintiff, and the former sets up the defence against the witness that his testimony should not be received, for the reason that he is not of age, or because he is a slave; and also where a plaintiff desires to prove his case by written evidence, and the defendant alleges that the document is forged, or was not drawn up by a notary public.

Defences of this kind, and others like them, should be heard by the judge, and he should not proceed with the original complaint until he renders a decision concerning them. These defences, and others mentioned above in the law beginning "Defendants sometimes admit;" are called in Latin *peremptorias*, which means a defence which terminates the action, and they are of such a character that parties can make them before issue is joined by answer, and afterwards, up to the time when judgment is rendered.

TITLE IV.

Concerning Judges, and What They Should Do and Observe.

It is sufficiently understood by the laws which we have set forth in the preceding Titles that plaintiffs should be careful, before bringing suit, to consider all those matters by which they may more justly present their claims, and institute legal proceedings; and also in what way the defendants should answer in suits brought against them, in order that each one may pursue the proper course, and not cause those who have to render decisions both for plaintiffs and defendants to labor in vain, and to state, in the first place, how many kinds there are; who has authority to appoint them; what kind of men they should be individually; how they should be appointed; and what they should do and observe, in order perfectly to perform their duties.

LAW I.

What the Word Judge Means, and How Many Kinds of Judges There Are.

Judicial officers who perform their duties as they ought, should legally bear the name of judges, which means good men who are appointed to interpret and enforce the law, and of these there are many kinds. The highest in rank, and the most honorable of them, are those who preside in the Court of the King, which is the head of the whole country, and who hear all the cases of such persons as are injured. There are others, in addition to these, who are appointed especially to hear the appeals taken from the decisions of the above-named magistrates, and such as these were called by the ancients superior judges, on account of their greater authority, as already stated. There are others who are appointed over kingdoms, or over certain other countries, who are called *adelantados*, for the reason that the king gives them superior authority over the judges of those districts. There are still other judges appointed in particular localities, as in cities and towns, or where it is suitable that lawsuits should be determined. There are others, also, who are appointed by all the artisans of a neighborhood, or by the majority of them, and these have power to settle disputes which arise among the latter by reason of their trades.

All the judges we have mentioned, are called, in Latin, *ordinarii*, which means men commonly appointed, with general jurisdiction each in the locality where he presides. There is still another kind of judges styled deputies, which means men who have authority to render judgment according to the orders of kings, *adelantados*, or ordinary judges. In addition to all these, there are others still, called, in Latin, *arbitri*, which means judges voluntarily chosen, who are selected to decide some particular dispute with the consent of both parties. We shall show what each one of these judges must do and observe by reason of his office.

LAW II.

Who Can Appoint Judges.

Judges who decide lawsuits, and whom we have referred to in the preceding law, are men who occupy very important positions. For this reason the ancients did not deem it proper that they should be appointed for the decision of temporal matters, except by the authority herein mentioned, namely, by emperors or kings who have the power to appoint those called ordinary judges. Judges of this kind cannot be appointed by anyone else but them, or by some one to whom they especially grant the power to do so by letter, or by special grant; or where artisans appoint those whose duty it is to decide matters

arising in relation to their trades, that is, whether their manufactured articles are well made, or not. Emperors, kings, or *adelantados*, whom we have already mentioned, and ordinary judges as well, have authority to appoint magistrates to decide particular cases. Other judges, voluntarily chosen, cannot be appointed except by the agreement of both parties, as above stated.

LAW III.

What Kind of Men Judges Should Be, and What Good Qualities They Should Possess as Individuals.

It should be diligently and earnestly borne in mind, that persons selected as judges, or *adelantados*, should be of the character of those mentioned in the Second Partida of this book. Where, however, persons like these, in every respect, cannot be found, they should at least possess the following qualities, to-wit: they should be loyal and of good reputation, and without covetousness; they should have learning, in order lawfully to determine causes, either through their wisdom or through long experience; they should be kind and affable to those who appear before them in court; and, above all, they should fear God and the person who appoints them. For, if they fear God, they will avoid committing sin, and will possess the virtues of piety and justice, and if they fear their Lord, they will be afraid to do anything on account of which he may punish them, constantly bearing in mind that they hold their positions as long as they render just decrees.

LAW IV.

What Men Should Not Be Judges, on Account of Personal Disadvantages.

There are certain personal disadvantages under which men labor, and on account of which they should not be appointed judges. For, according to the ordinances of the ancients, a man who is ignorant, or imprudent should not be a judge, because he would not have sufficient intelligence to hear or decide suits justly, nor, also, one who is dumb, because he would not be able to question the parties when it was necessary, or answer them, or render decisions orally; nor deaf because he could not hear what is discussed before him; nor should a blind man hold such an office, since he cannot see persons, or recognize them, or show them honor; nor a man afflicted with a chronic disease, that he cannot decide causes, or remain in court, and because it is doubtful whether he will be cured or not; for he who has an impediment of this kind cannot endure the fatigue necessary to determine actions at law. Moreover, a person of bad reputation, or who has committed some act through which he becomes degraded according to the laws of Spain, is ineligible, for the reason that it would not be just that a man of this kind should sit in judgment upon others. Nor should a man belonging to a religious order be a judge, because he would thereby suffer loss in the performance of his duties in the service of God; and besides it would be unreasonable that he who has abandoned the riches of this world, should assume another character to hear and determine the controversies of men who are disputing about those riches. Nor can a woman be a judge, for it would not be becoming for her to be present in a crowd of men deciding lawsuits. Where, however, she is a queen or a countess, or some other lady who has inherited the government of a kingdom, or a country, such a woman can hold an office of this kind on account of the honor of the position which she occupies, with, however, the advice of learned men, for the reason that, if she errs in anything, they may be able to counsel and correct her.

We declare, moreover, that the authority of a judge should not be conferred upon a man who is a slave, and this is the case for the reason that although he may be intelligent, he will not have free will to act, since it is not in his power; and therefore he might sometimes be compelled to decide cases according to the wishes of his lord, and not according to his own knowledge, which would be contrary to law. Where, however, it happens that authority to act as judge is granted to a party who conducts himself as if he were a freeman, and it is not known that he is in slavery, in a case of this kind we decree that all decisions up to the day when it was discovered that he was a slave, shall be valid. This the ancient sages deemed proper for the following reason, to-wit: that when an entire people together commit a mistake of this kind all should tolerate it just as if it had not occurred.

LAW V.

Of What Age Those Should Be Who Are Invested with the Authority of Judge.

He who is invested with authority to decide lawsuits constantly, and is called an ordinary judge, should be more than twenty years old; and this limit was fixed because those who have arrived at that age are endowed with sufficient intelligence to hear and decide the disputes of the parties who come before them. The deputy judge appointed by an ordinary judge to decide some particular case, should also be of this age. Where it happens that a deputy judge who is twenty years old, is not willing to hear the suit for which he was appointed by an ordinary judge, he can compel him to hear it, if he belongs to the country over which the former has jurisdiction. But where he is under twenty years of age and over eighteen, then the ordinary judge has no authority to compel him to hear the case, although he may have jurisdiction over him; yet, if he, of his own free will, desires to hear it, he can do so. Where, however, the deputy is under eighteen years of age and over fourteen, the decision rendered by him in the suit which he was appointed to hear, will not be valid, except where he has been appointed with the consent of both parties and the approval of the king; for then the decision which he renders according to law in the said suit will be valid, and cannot be set aside for the reason that it is alleged that he was under age.

LAW VI.

How Judges to Whom Authority Has Been Given to Preside Should Be Appointed, and How They Should Swear and Give Security to Perform Their Duties Well and Faithfully.

After judges are selected as we have stated above, they should be appointed over the district where they are given authority to preside, having sworn, before they occupy their positions, that they will observe the following rules. First, that they will obey all the commands which the king gives them verbally or in writing, or by his authorized messenger. Second, that they will protect the sovereignty, the honor and the rights of the king in all things. Third, that they will not reveal the secrets of the king in any way whatsoever, not only those which he imparts to them himself, but such as he communicates to them in writing, or by his messenger. Fourth, that they will avert everything to his injury, in every way in which they have the power and the knowledge to do so; and that when they are not able to do this, they will give information of the matter to the king, as quickly as they can. Fifth, that they will decide all cases which come before them, speedily and to the best of their ability, according to the laws of this book, and according to no others, and

that they will not swerve from truth or justice through the influence of either hatred, or fear, or on account of any gift given, or promised to be given them. Sixth, that as long as they hold office, neither they, nor anyone else acting for them, will accept a gift, or a promise from any person who has brought an action before them or who they know is about to institute one, nor from anyone else who makes such a gift or promise in behalf of any of said parties. This oath judges must make in the hands of the king, and when he is not present, over the Holy Gospels, the oath being administered by those whom the king has especially ordered to administer it.

After judges have been sworn in this manner, sureties and security must be taken from them, by which they bind themselves, and promise that when their terms of office expire, and they have to leave the positions to which they were appointed, they will personally remain, for a period of fifty days afterwards, within their former jurisdiction, in order to render justice to all those who may have been wronged by them. After their terms of office have expired, they should finally fulfill their duty as follows; that is, by making public proclamation every day, that if there are any persons who have any grievance against them, they will do them justice. And, after this, those who are appointed in their places, should take with them some reliable men, to whom no suspicion attaches, and who have no grudge against the first judges, and with them should hear those who have any cause of complaint against their said predecessors; and for every error and wrong which the latter have committed, they should compel them to make reparation, as commanded by the laws of this book. Where, however, one of them has committed a crime for which he deserves to be put to death, or to lose a limb, they should arrest him and send him to the king, with a written statement why he deserves this, for it is the right of the king and of no one else to render a decision in a case of this kind.

LAW VII.

What Ordinary Judges Are Required to do and to Observe with Regard to the Places Where They Must Be Constantly in the Exercise of their Office.

General and particular places should be assigned to judges, where they can hear cases, and publicly decide the disputes of the parties who come before them to obtain justice. They should sit every day from early in the morning until noon, on such days as are not prohibited and are called holidays, and also from three o'clock in the afternoon until vespers, where many suits are to be heard.¹ They should not absent themselves, or hide in their own houses, or elsewhere, where complainants cannot find them. Where, however, they have to hear important cases, they can withdraw on this account, in order not to be disturbed by others. Moreover, while hearing cases, they should have with them good and intelligent clerks, who should record in a separate book the powers of attorney which the agents of the plaintiff or defendant bring before them, and also the complaints and answers, and the instruments executed by the parties in court, as well as the testimony of witnesses, and the judgments, and all other matters stated there, so that no doubt may arise through forgetfulness, or for any other reason. They should also have with them men appointed for the purpose of arresting those who give cause for it, and to execute all the orders which they issue according to law.

¹ The Visigothic Code required a judge to hold court all day from dawn to dark, except during a recess of an hour at noon, or, in its stead, an intermission of two days in every week when he was permitted to remain at home. He was especially directed not to subject litigants to unnecessary annoyance or expense. It was also his duty to furnish each party with a transcript of the decree. Where an erroneous decision was rendered through ignorance he was compelled to make oath that this was not due to partiality or the hope of gain. (For. Jud. I-II-18, 19, 23.)—Ed.

Judges should also be very careful not to preside in a place outside their jurisdiction, nor to imprison, or use compulsion against any man, except by agreement of the parties, for in a case of this kind they can do so as mediators, and not as ordinary judges. Where any of them act contrary to this rule, their decisions will not be valid, and they must return double the value of the article delivered by their order to those from whom they directed it to be taken. We also decree that where a judge is so audacious as to order corporal punishment to be inflicted upon a man or woman outside of his jurisdiction, he shall receive, in his own person, the same punishment which he ordered to be inflicted upon the party he sentenced; for we do not consider that such punishment is legal, since it was inflicted where it should not have been done, he who imposed it not having the authority of the king to do so. Above all, judges should be very careful not to compel a stranger to answer in court before them within the jurisdiction where they had been appointed to preside, except for one of the reasons which we stated above in the Titles concerning Plaintiffs and Defendants, which treats of this subject.

LAW VIII.

What Judges Are Required to do and Observe, as Well as the Parties When They Come Into Court Before Them.

Judges should quietly receive and hear the parties who come into court before them seeking justice, but they should do so in such a way as not to give rise to contempt. This would be the case when any of the parties venture to argue insolently before them, or to whisper in their ears while they are seated in the place where they should render their decisions publicly. They should not tolerate acts of this kind, or others similar to them, for, leaving out of consideration the contempt which they must incur on this account, those who see this may entertain evil suspicions of them, through supposing that the conversation was to the advantage of one party, and to the injury of the other. We also decree that, while the judges are hearing anyone argue his case, they shall not permit another person to contradict him, or interfere with his argument, but should hear cases in an orderly manner, so that he who is first to make his statements before them may be heard, and decision rendered before a new case is begun. Where they act in this manner they will have a better understanding of the arguments made before them, and can render their decisions without any hindrance.

LAW IX.

What Judges Are Required to do and Observe, When a Suit in Which Their Parents or Their Children Are Concerned Is Brought Before Them.

A criminal prosecution means an accusation or complaint made in court by one man against another, concerning some offence which he alleges the latter has committed, for which he may suffer loss of life or limb, or some other corporal punishment, or expulsion from the country. A prosecution of this kind instituted against a parent or son of a judge, or any member of his family who lives with him constantly, should not be heard by him; although it may be proper for him to punish such persons when they give cause for it. And we decree that the same rule shall be observed when any such person desires to prosecute another before a judge in a case of this description. When an instance of this kind occurs, the judge should communicate the facts to the king, and ask of him, as a favor, to send some good man to hear and decide the case, and the king should do so. We also decree that an ordinary judge

must act in this way in all other cases—although they may not be of a criminal nature—in which his father, his son, or any other member of his family is concerned, and which are brought before him, no matter of what description they are. But where the magistrate is not an ordinary judge but one appointed by order of the king to decide some particular case, even though it may concern his father or his son, he can decide it in the way in which he was directed to do. Moreover, we decree that where the father or son of an ordinary judge, or any other member of his family, has such rights in any property that it may be lost through lapse of time, if he does not bring suit for it within that period; then, for any reason of this kind, he can institute proceedings before him, to avoid losing the rights which he has in said property. Afterwards, when issue has been joined by complaint and answer before him in a case of this kind, he should not proceed further with it, or render a decision concerning the property; but, instead of this, he should appoint someone who is without suspicion to hear and decide the case according to law.

LAW X.

A Judge Should Avoid Hearing His Own Case, or Any Other in Which He Has Acted as Attorney-at-Law, or Attorney-in-Fact.

The judge, the plaintiff, and the defendant are three persons, who, it is proper, should appear in every suit instituted in court. For which reason we decree that no judge has authority, or should hear or decide a case involving his own property or any in which he is interested; for one man ought not to occupy the places of two, as, for instance, both those of judge and plaintiff. We also decree that no man should hear or decide a case in which he himself has previously, been an advocate or counsellor, and this the ancient sages considered fitting, for the following reason, namely; that if he should subsequently give judgment against the party whom he had previously assisted or advised, he would show himself to be an unjust attorney; and, moreover, if he should render a decision in favor of him, he would be liable to suspicion that he did so through a desire to aid the party whose adviser he had been in the first place.

LAW XI.

Judges Should Endeavor, by Every Means in Their Power, to Ascertain the Truth in All Cases Brought Before Them.

The truth is something which, above all other things in the world, judges should consider in cases brought before them, and for this reason when parties oppose each other in any suit in court, judges should be diligent in endeavoring to learn the truth in regard to it by every means that they can. They should do this, in the first place, through the information which they obtain from the plaintiff and the defendant in court, and through the questions put by them to the parties concerning the matters in dispute, and also by their oaths, in the way which we have stated in the Title which treats of this subject; and when, judges are unable to ascertain the truth by any of these methods, they should hear the witnesses which the parties call to prove their cases, by swearing them openly before them in the presence of the said parties, and afterwards by taking the testimony of each one alone in private, and in a secluded place. And, above all, if they are unable to learn the truth by the introduction of grants, valid documents, or admitted signatures, or from strong presumptions, they should act in the manner which we have indicated in the laws of this book or in the places where each of these matters is treated of. When they have ascertained the truth they should render judgment in the way in which they think they are compelled to do, according to law.

LAW XII.

It Is Proper for One Holding the Office of Judge to Terminate Lawsuits Begun Before Him.

Judges should terminate with justice suits brought before them as soon as they can, for, as the ancient sages said, no suit can be greatly protracted before just and discerning judges. Where, however, obstacles arise, such as those of serious illness, or a pilgrimage, or any mission which they have to perform in a distant country; or where their term of office has expired; or if they should die before they decide suits commenced before them by complaint and answer; other judges, appointed in their places can proceed with the said suits, taking them up where the first ones left off, and, after they have ascertained the truth they should decide them just as if they had been begun before them.

We also decree that judges must do justice to both parties, so that none of them will be compelled to appeal to the king through their failure to perform their duty; for where they act in any other manner they should be punished according to the will of the king, and also pay all the costs which the party who failed to obtain justice incurred on this account. But when complainants being able to obtain justice before the judges are not willing to do so; or where a judgment was rendered against them according to law and they do not pay it; if persons of this kind appeal to the court of the king for any of these reasons, the king should punish them, and send them to his judges, avenging himself upon them with severity, as obstinate men, who conduct themselves with malice in actions at law.¹

LAW XIII.

Judges Should Take Care That the Parties to a Suit Do Not Divine the Opinions Which They Secretly Hold, Before They Render Their Decisions.

Complainants sometimes come before judges, weeping and giving evidence of great affliction, and stating that they have suffered dishonor, or very great injury at the hands of another party. And, although judges should sometimes take pity on men, nevertheless, we declare that they should not be so tender of heart as to weep with them, nor ought they, at once, to believe their statements, but they should, instead, summon the party against whom the complaint is made and hear what he has to say. There are two reasons for this; first, because it is not the mark of a firm or just judge, to manifest the feelings of his heart in his countenance; second, because it sometimes happens that those who lament in a piteous manner are acting through enmity, and come forward with their murmurs to conceal their own misdeeds and to lay the blame upon those of whom they complain.

¹ *Faciendoles grand venganza.* The avenging character of the magistrate, so conspicuous in the codes of primitive nations and especially in that of the Visigoths, is frequently referred to in the *Partidas*. In ancient criminal legislation, especially that based on alleged theocratic principles, the deterrent effect of punishment was largely subordinated to the infliction of revenge for offences against society, which had the effect of bringing into play the worst passions of the individual as represented in the person of the presiding judge. This spirit of retributive justice, of which numerous examples occur in the Pentateuch and the Koran, was often granted by the execution of the *lex talionis*, and in the desire for its indulgence the latter undoubtedly originated.

The atrocious character of the legalized sanction of the exercise of vengeance which exacted the sacrifice of one member for another; "an eye for an eye, a tooth for a tooth, a foot for a foot, a hand for a hand," is manifested in the Twelve Tables, where the rule of retaliation is stated as follows: "*Si quis alteri manum, brachium, pedem, aut aliud corporis membrum concusserit, neque cum illo, cuius membrum rumpit, pacifici velit: talionis lege, oculus pro oculo, dens pro dente, pes pro pede, manus pro manu, et quaecunque fuerit, membrum quod laesit, idem ipse quoque laedatur.*" (Leg. XII, Tab. VII-IX.) A sum of money might be paid the injured party, by way of compensation, but if he refused to accept it the penalty was inflicted. Later Roman jurisprudence abolished this proceeding, which was in the nature of the gratification of a private grudge, and substituted an action for damages, wherein the character of the injury was required to be specifically set forth. "*Quid injuriæ factum sit, certum dicat.*" (Corp. Jur. Civ. Dig. XLVII-X-7.)—Ed.

We also decree that when a judge ascertains that a party who has stated his case before him has begun an unjust lawsuit, or is guilty of the offence of which he is accused, he must carefully conceal his feelings, so as not to disclose by words or gestures the decision he has determined to give in the case, until he renders judgment. Where judges act in this manner they show themselves to be learned, intelligent, firm, and good-hearted men, and add to the dignity of their office; and the people who have to support them will honor them more, and will have greater fear of them, and where they act otherwise, the opposite of all this will befall them.

LAW XIV.

Judges Should Send to the King Their Reasons in Writing, and the Security Which They Have Taken from the Prisoners Whom They Send to Him, When They Do Not Venture to Try Them.

Judges sometimes have prisoners in their custody whom they do not dare try, and they send them to the king. For this reason they should be careful to forward to the king, in writing, the reasons why they imprisoned them, and also the evidence, and the security which they took from them on account of the offences for which they were arrested, whether this evidence was obtained from witnesses, or written documents, or confessions, or signatures, or presumptions, so that the king may be certain what disposition to make of them. For if they act in any other way they will be guilty of serious error in two respects; first, by encumbering the king with prisoners, and not giving him a way to come to a decision with regard to them; second, by causing men to languish in custody without deserving to do so, and assigning no reason for it. Wherefore we decree that, in addition to the penalty which the king can impose, according to his will, upon the judge who commits an offence of this kind, he should also compel him to pay the costs and expenses incurred by the prisoner, as well as damages for the injury which he has sustained by reason of his imprisonment.

LAW XV.

Judges Should Be Diligent in Rendering Their Decisions.

When a judge renders his final decision he should be satisfied that it is complete in every respect, so that none of the parties may take an appeal from it. For, since the principles of law direct him what to do, he should, in no way, be guilty of negligence in giving his decisions; as, for instance, through forgetfulness; because his duty must be performed not only in word, but also in deed. If he acts in any other way great injury will result, for he will be considered forgetful and ignorant, and a despiser of the acts which he himself should perform, and he will also do harm to both parties; first, to him who has been wronged, by delaying the reparation which he should receive; and second, to the other party by inspiring him with boldness to commit another act like this, or one that is worse. Therefore a judge should perfect his decision in every respect, in the way explained hereafter in the laws of the Title treating of this subject.

LAW XVI.

Judges Who Are Required to Preside in Court Every Day, Should Maintain Peace and Justice Within Their Jurisdictions.

Adelantados and other magistrates are appointed over countries and people to maintain them in peace and in justice, by honoring and protecting the good, and by punishing and correcting the wicked. For this reason they should be

very diligent in serving faithfully in their positions God and their lords who appoint them, always watching the people placed in their charge that no evil tumult or seditions may arise among them, and also that no truce or peace established among men may be violated. For although they may possess all those good habits and excellent qualities, which we stated above judges should have in order to decide lawsuits, it is not sufficient for them to perform their duties thoroughly, if they are not diligent in doing so. We also decree that they should not permit any man who has been proclaimed a criminal or an outlaw by the king or any council, to associate or live with them, but that whenever he is found within their jurisdiction, they should arrest him, and send him to the king or the council that outlawed him, that he may receive there the penalty which he deserves.

LAW XVII.

What Ordinary Judges Have to Observe and Do, When They Wish to Appoint Others in Their Stead to Hear Certain Special Cases.

We stated in the second law of this Title that ordinary judges are the *adelantados* and magistrates appointed by the king in countries and places to decide the suits which are daily brought before them. And, for the reason that officials of this kind are sometimes unable to decide by themselves all the disputes of men who resort to their courts, they are compelled to refer certain suits to good men, to hear and decide them in their stead. And since in preceding laws we have stated, in sufficient detail, what they have to observe and do when they themselves hear and decide suits, we desire, from this time forth, to state what matters they must consider when they commission others to decide in their stead, and we declare that these are four in number. First, those whom they appoint to hear these cases must belong to the country over which they have jurisdiction; for, if they belong to some other, they cannot compel them to hear such cases, nor, on the other hand, would the others be required to hear them if they did not do so voluntarily. The second thing which ordinary judges should consider is, that the said suits should be of such a nature and description that they themselves could decide them if they desired to do so; for if they were unable to decide them they would have no authority to order others to do so. The third thing which they should investigate is, whether the suits are of a kind not forbidden by the laws of this book to be committed to the hands of another. Fourth, they should order those who are to hear such cases to hear and determine them in the country in which the ordinary judges have commissioned them to do so, and where the latter have jurisdiction. For, just as they cannot and should not hear or decide cases beyond the limits of the country where they have jurisdiction, likewise they have no authority to order anyone else to do so, although they themselves, while absent from that country, can direct by their letters any residents of it to hear and decide any disputes or special cases there in their stead.

When ordinary judges investigate and observe the four things which we have mentioned here, they can safely refer suits to others to be heard, and although these may not be willing to hear them, they can compel them to do so; and all that the latter, who are called deputy judges do and decide according to law will be valid, just as if the ordinary judges themselves had performed the acts, and where they do otherwise their decisions will be invalid.

LAW XVIII.

What Kind of Suits Ordinary Judges Can Commit to the Hands of Others to Be Decided, and What Kind They Cannot.

Men frequently have disputes and controversies concerning which they come into court, and although this may happen in many ways, the ancient sages divided them specifically into three kinds. The first and most important is every case in which sentence of death, or of loss of limb, or of expulsion from the country, or of the return of a man to slavery, or of emancipation, can be given. The power of deciding cases of this kind is called *merum imperium*, which means the unrestricted and eminent sovereignty which emperors, kings, and other great princes possess, whose duty it is to sit in judgment over countries and their people. Another man cannot obtain this authority, or acquire it through descent or through long established custom, except when it is especially granted to him as a privilege by some of the above-mentioned great lords, or by some law of this book which confers it upon him especially, by reason of the office for which he was chosen.

Those, however, who have power to decide cases of this kind, whether they are *adelantados* or other ordinary judges, should themselves personally hear and determine them; and cannot, and should not, commit them to anyone else to be heard, excepting where they have been summoned by the king to come to him, or they themselves are forced to go elsewhere, for some lawful reason, and cannot avoid doing so. Under circumstances of this kind they have authority to appoint someone else to hear these cases, until they arrive at the point where a judgment must be rendered; and after that the deputies should not proceed farther with them, but the ordinary judges, after their return, must examine all that took place in the presence of the deputies, and render their decisions as they think they should do according to law.

The second, and usual way of deciding cases, is to appoint guardians for minors or insane persons, or such as are weak minded; or to give complainants the title to property in their possession where they produce proper proof that the inheritance of said property belongs to them; or to order a surrender to be made of real estate, or of any other property whatever, for some suitable reason; or to determine a suit in which the amount of more than three hundred maravedis is involved. Judges themselves, should hear cases of this kind, and have no authority to commit them to the hands of others, except in two instances; first, when the ordinary judge has such a great number of suits to hear that he cannot dispose of them all; second, when the king orders him to do something which is for his service and for the benefit of the country, and he is so occupied, by reason of it that he cannot hear the suits; for then he has the power to commit them to a deputy judge, who can hear and decide cases of this kind in a proper and lawful manner.

The third kind of suits, and the one of the least importance, includes all where the property in dispute amounts to less than three hundred maravedis of gold; for, in an instance of this kind, the ordinary judge can appoint a deputy to hear and determine the suit in his stead, if he desires to do so, although he may not be hindered by any of the serious impediments which we mentioned above.

LAW XIX.**What Things Deputy Judges, Appointed to Hear Special Cases, Should Observe and Do.**

By deputies are meant judges appointed to hear certain special cases by order of the king or of ordinary judges, as we stated above. Although all of them have the same name, distinctions, nevertheless, exist between them, for those who are appointed by command of the king can order others to hear and decide in their stead the special matters which the king has committed to their hands, whether issue has been joined before them by complaint and answer, or not. Other deputies, however, whom ordinary judges order to hear and decide certain special cases, cannot appoint others to hear them in their stead, if, in the first place, issue has not been joined by complaint and answer before them.

We also decree that deputy judges can hear cases by order of those whom we have mentioned above, in two instances; first, when they direct them to hear and decide some suit; second, when they are ordered only to hear it, and he who committed the case to their hands reserves for himself the power of rendering a decision, and when a case is referred to them in this way they should act accordingly; for the reason that the authority of deputies cannot be greater than that which was granted them by the letter or the words of the king or their other superiors, as we shall show hereafter.

We also decree that, after the deputy judges have heard the cases as they were ordered to do, if those who committed them to their hands desire that they should decide them, said deputies must reduce to writing everything which took place in their presence, and examine and diligently consider the arguments from beginning to end: and, after they have examined them, they can render their decisions in the way in which they think they should do. But an ordinary judge, appointed by the king in some district to hear and decide appeals, has no authority to refer a special case to anyone else to be heard, and reserve for himself the power to decide it; for he, himself, should hear and determine it by a judgment, or commit it to the hands of someone else to do so.

LAW XX.**What Matters the King Should Consider, When Parties Petition Him to Appoint a Deputy Judge to Decide Some Case, and What Jurisdiction Deputies Possess.**

Both parties sometimes appear before the king and petition him to appoint a deputy judge to hear them and decide their case and the controversy existing between them, and sometimes one party alone does this. For which reason we decree that when both parties request this, the king, or whoever makes the appointment, should be careful to designate a man for the purpose who may be as acceptable to one party as to the other; where, however, the man whom he appoints is reliable and without suspicion, even though he may not be on good terms with one of the parties, he should not refrain from appointing him on that account.

Where one of the parties alone makes this request, the other not being present, the appointment of the person whom the said party especially desires, should not be made, except where the king, or the official solicited is certain that the said person will decide the case justly, and where no doubt whatever exists concerning him; and if he entertains any such doubt, he ought to select someone else whom he considers a good and faithful man, and send word to him to hear and decide the case. A deputy of this kind has authority to decide

and hear the case in the way in which the king ordered him to do, and in no other.

We also decree, that a deputy judge should not concern himself with any other suit existing between the parties except the one which he was especially appointed to decide, except where this is done by agreement of both parties, for then he will have authority to do so. We also decree, that after the defendant has answered the complaint of his adversary before the deputy judge, if he himself wishes to bring a charge against the plaintiff before this same judge, he can do so by way of reconvention; and the deputy judge has authority to hear a case of this kind and decide it, although it may not have been especially committed to his hands; for it is proper that, since the plaintiff was willing to seek justice before this judge, the defendant should also.

LAW XXI.

For What Reasons Deputy Judges Lose Their Jurisdiction.

Deputy judges have power to decide actions at law according to the terms by which they were committed to their hands, as we have explained in the preceding law; but this jurisdiction is lost for certain reasons which we will now mention; first, when the official who ordered the case to be heard revokes the order, and desires to hear it himself, or to commit it to the hands of another; second, where the standing of the deputy is improved, and he becomes equal in authority to the person who ordered him to hear the case, or becomes superior in position to him; third, where he who ordered him to hear the case dies, or loses his office before issue is joined in the suit before the deputy. Where, however, issue has been joined by answer before he who committed it to his hands dies or loses his office, then the authority of the deputy does not determine, but we decree that he can proceed with the case and decide it in the way he thinks he can do so according to law, just as if he who committed it to his charge were alive, or had not lost his office.¹

LAW XXII.

What Magistrates, Whether They Be Deputies or Ordinary Judges, Must Decide and Do When One of the Parties States That He Entertains Suspicions of Them.

Suspicion sometimes arises in the heart of a defendant against a judge before whom he is sued, and because it is a very dangerous thing for a man to have a lawsuit before a judge who is liable to suspicion, the ancient sages deemed it proper that where the judge who is suspected is a deputy, he should be removed before issue is joined by complaint and answer by the defendant confronting him in the presence of good men, and stating that he considers him subject to suspicion, and that for this reason, he is not willing to proceed with the case, or answer in court before him; he who alleges this, swearing if it is required of him, that he does not make the charge maliciously in order to protract the suit, but because he entertains fear and suspicion of the judge. After he has stated this and sworn to it, the judge should not compel him to answer before him, even though he does not say for what reason he considers

¹ Under the Civil Law a deputy could be appointed by any presiding judicial officer for the exercise of general or special jurisdiction, and all persons, known to be familiar with the law, were eligible. In primitive times the king enjoyed this right as one of his prerogatives, but subsequently, on account of public convenience and necessity, it was assumed and practised by magistrates of every rank. It was explicitly provided, however, that the deputy could, under no circumstances, exceed the authority conferred upon him, as is stated in the text. "*Solet Praetor iurisdictionem mandare; et aut omnem mandat aut speciem unam; et is cui mandata iurisdictione est, fungetur vice eius qui mandavit, non sua.*" (Corp. Jur. Civ. Dig. II-1-16.)—Ed.

him subject to suspicion, for, according to the tenor of the ancient laws, he is not obliged to state this if he does not desire to.

The deputy judge who thus becomes suspected, has, however, the power to compel both parties within three days to agree upon some good men without suspicion, to hear and decide the controversy between them. Then he, or those upon whom the said parties agree, can and should hear and decide the case in a way that the deputy judge should or could have heard it, had he not been disqualified through suspicion. If discord should arise between the parties, so that they cannot agree upon the selection of men to decide their suit, then the ordinary judge of the district, where this controversy exists, can, at his own instance, select certain good men, who are without suspicion, and order them to decide it, in the same way as the first one was directed to do. But where a defendant wishes to disqualify an ordinary judge on account of suspicion, we decree that this cannot be done; for since a judge of this kind has been selected by the king as a good man, and has been granted authority by him to decide all lawsuits in the district where he was appointed, no one ought to entertain a suspicion that he would do anything except what was for the best in any action brought before him. However, when anyone considers him subject to suspicion, the ordinary judge should then, of his own accord, select one or two good men to hear the suit, and decide it along with him, according to law, so that no evil suspicion may arise concerning it.

LAW XXIII.

How Many Kinds of Judges of Arbitration There Are, and How They Should Be Appointed.

Arbitri, in Latin, means in Castilian, arbitrators, who are selected and appointed by the parties to decide a controversy existing between them. They are of two kinds; first, when men place their disputes and controversies in their hands to be heard and decided according to justice; and in a case of this description we decree that arbitrators like these, after they accept and are appointed to determine suits in this manner, should proceed just as if they were ordinary judges, causing issue to be joined before them by complaint and answer, and hearing and taking the evidence and the arguments and defenses, made by each of the parties, and, above all, they should render final judgment as they think they should justly do. The other kind are those called, in Latin, *arbitratores*, which means arbitrators and common friends, who are selected by agreement of both parties, to settle and decide contests existing between them in whatever way they deem proper.

Persons of this kind, after they have been chosen and have received into their hands suits and controversies of this description, have authority to hear the arguments of both parties, and to reconcile them in whatever way they desire. And although they do not cause issue to be joined before them by complaint and answer, and may not pay strict attention to those things which other judges are required to observe, nevertheless, their decision or the settlement which they make between the parties will be valid, but it must be made in good faith and without fraud. For where a decision is rendered maliciously, or fraudulently, it should be reviewed and corrected according to the judgment of some good men selected for this purpose by the ordinary judge of the district where the affair took place. The arbitrators above mentioned should be appointed in the following way, namely; those who desire to commit the case to their hands must state what the matter is concerning which they are at variance, and whether it includes one, or many things; or whether they wish to submit to them all the controversies which they have had with one another,

up to that time. They should state in what way they confer authority upon the said arbitrators, in order that they may deliberate upon the suits placed in their charge, for the reason that they have no authority to hear or decide them, except with respect to such matters and in the way in which the parties have conferred power upon them. The latter should, above all, promise to observe the orders and the decisions which the arbitrators make in the said suit, under some fixed penalty which the party unwilling to abide by the decision must pay the other party who obeyed the order of the arbitrators; for, if a penalty were not prescribed, the parties would not be bound to obey the order made, or the judgment rendered in the case, except where they kept silence and did not manifest opposition to it for ten days after sentence was pronounced; for then, although no penalty was imposed, the parties will be required to observe the decision which had been rendered in this way, as we shall show hereafter. When the case is committed to the hands of arbitrators, a schedule of all the matters in dispute between the parties must be drawn up by a notary public, or one to which their seals are attached, in order that no doubt may subsequently arise concerning these matters.

LAW XXIV.

What Kind of Suits or Controversies Can Be Placed in the Hands of Arbitrators, and What Kind Cannot.

Every suit can be placed in the hands of arbitrators to be decided, which involves any subject whatsoever, except one involving punishment of death, or loss of limb; or some other punishment; or banishment from the country; or one relating to the servitude or liberty of an individual; or matters affecting the common benefit of a certain locality or that of all the kingdom, which, although every man among the people can prosecute and defend in court, still no one should submit them to arbitrators, and if this should be done the judgment rendered concerning them will not be valid. Where, however, the whole body of the people, or the larger portion of them, appoint a representative for this purpose in matters which concern them, and grant him authority to place them in the hands of arbitrators, he has then power to do so.

We also decree that any controversy or action arising through the marriage of any person, should not be committed to the hands of arbitrators. The same rule applies to a lawsuit brought by one man against another, for neither of them should place the case in the hands of his adversary, in order that he, acting as arbitrator, may decide it, since if he should do so, neither his order nor his decision with regard to the same will be valid, for it would not be proper for a man to be a judge in his own case. Where, however, a man has inflicted wrong or dishonor upon another, and places himself in his hands, declaring that he was desirous of making reparation to him in a manner in which he himself may direct, in a case of this kind he can act as arbitrator of the controversy which the other party placed in his hands, but he should exercise great moderation in what he orders concerning it, so that it may be reasonable and proper, considering carefully what the wrong and dishonor was which he suffered, and also the rank and character of the person who puts himself in his hands, and, where he decides in this way, whatever he does will be valid. But where he orders something out of reason he should be set right by the judgment of good men, and the other party will not be bound to abide by his decision, even though he had placed the matter in dispute in his hands, and sworn to perform whatever he should deem proper.

We also decree that where an action is brought for any property before an ordinary judge, and the parties desire to place the matter in dispute in the

hands of that judge to decide it as if he were an arbitrator, they cannot do so. But where they desire to put the matter in dispute in his power, so that he may decide it by agreement of the parties, or in any other way that he may deem proper, as a common friend, we decree that, in this case, an ordinary judge can consider it, although it was in the first place brought before him in court, and that all he says or orders with respect to the controversy will be valid. But if the parties desire to place the matter in the hands of some one else, they can do so in any way whatsoever, even though legal proceedings may have already been instituted concerning it.

LAW XXV.

Who Those Persons Are Who Can Place Their Suits in the Hands of Arbitrators.

When parties have placed their suits in the hands of arbitrators they can proceed with them if they are instituted by such persons, as were, themselves, entitled to appear in court before an ordinary judge, but where they are brought by others to whom this is prohibited, they cannot do so. For which reason we decree that, where anyone under twenty-five years of age submits his case to arbitrators, without the order or consent of his guardian, unless he gives sureties to be bound for a sum fixed by the arbitrators, and they afterwards render a judgment against him, and he is not willing to abide by it, he has that right, and will not, for this reason, incur any penalty. The sureties which he gave, however, will be obliged to pay the penalty to which they bound themselves, if the minor is more than fourteen years old and refuses to accept the judgment. But where the minor is over fourteen years of age, and puts his case in the hands of arbitrators, not having at that time any guardian, we decree that it is proper that he abide by what the arbitrators order, and consider their decision as binding, and if he does not, he will be liable to the penalty to which he bound himself; except where he is able to prove that some fraud was committed upon him in the suit, or that he will suffer loss through some fault of himself or of his attorney, or that they gave a decision against him to his great injury. If he proves any of these things he will not incur the penalty, even though he may not be willing to obey the decision of the arbitrators.

LAW XXVI.

What Arbitrators Should Do and Observe When the Parties Desire to Put a Case in Their Hands.

Arbitration is something which men should earnestly desire to have recourse to, and especially such as have a suit or controversy over any matter in which they seek justice. For this reason we decree that when any person put their lawsuits in the hands of arbitrators, they who receive them should exert themselves diligently to dispose of the same, by investigating and deciding them, so that the parties may remain in peace. In order to do this properly they should, in the first place, carefully consider whether the suit intended to be submitted to them is of such a character that it can be decided by arbitrators; for if it is otherwise, they should not, neither have they authority, to receive it in any way whatever. Moreover, they should be careful, when the parties place the case in their hands, to compel them to bind themselves under a certain penalty to abide by what they direct. If the penalty is not fixed at this time, the parties will not be bound to obey their order if they do not desire to do so, as we previously stated, and thus the labor

which the arbitrators have performed in hearing the suit, will become a source of contempt and disgrace. Where it happens that one party alone bound himself by a penalty, and the other placed some article of personal property under the control of the arbitrators in the suit, agreeing to forfeit said property if he declines to consider their decisions binding, and the other party, who was obedient, obtains it; we decree that this contract, or any other like it, will be valid and should be observed, and that they can proceed with the case just as if the parties had agreed upon the same penalty with regard to one another.

We also decree that arbitrators should be very careful not to accept or decide cases placed in their hands, except according to the terms by which this was done by the parties, for, in any other way, their acts will not be valid. And we also decree that if the parties desire to place their suits in the hands of arbitrators, under such terms that they would be required to render judgment as dictated by some other man selected by the parties, and had no authority to decide otherwise, they should not accept the case under such conditions, for the reason that the decision, after it has been rendered in this manner, will not be valid. The ancient sages considered this proper for the following reason, namely: the free will to form a decision should be in the power of the judges who have to decide cases of every description whatsoever, and not at the pleasure of others, although they could, and should, take the advice of good men, when any doubt arises in the matters which they have to determine. Where, however, parties desire to put their case in the hands of arbitrators, with the provision that, if they cannot agree, they should associate with them some other person, selected by the said parties, in an instance of this kind we decree that they can receive the suit. Where the man with whom the arbitrators are to be associated is not designated by the parties, then the judges themselves should appoint him and can select anyone whom they wish, and if they are not willing, the ordinary judge can compel them to do so, if either, or both parties demand it.

LAW XXVII.

What Arbitrators Have to Do and Observe When Parties Have Placed a Case in Their Hands, With the Provision That They Decide It Within a Certain Time.

When a certain day has been appointed by the parties on or before which the arbitrators may decide a suit submitted to them, we declare that they can do this up to that day, but, after the time has expired, they cannot decide such cases, except where power had been given them that, if any impediment should arise on account of which they may not be able to render judgment by the day which was indicated, they can extend the time. In a case of this kind we decree that when the arbitrators desire, on account of any obstacle which may have arisen, to prolong the time for the determination of the suit which has been placed in their hands, and both parties then oppose it, they have no authority to extend the time. And if they should not be willing, or are not able, to render judgment by the day which has been designated, from that time forward they will have no authority to do so, nor should they exert themselves afterwards to perform any act relating to the case. But where it happens that only one party manifests opposition to the arbitrators, in the matter of extending the time, and the other does not, the party opposing it is liable to the penalty imposed when the case was submitted to the arbitrators, and we also decree that the authority which they had to decide the case is abrogated, and that they should not, or cannot, have anything afterwards to do with it.

Where both parties desire to have the time extended, and the arbitrators for some good reason refuse to give their consent to extend it, then they should not be required to do so; and they cannot render the decision after the time has expired because the authority with which they were invested in the case placed in their hands is annulled. Where, however, the parties did not indicate any certain time or date by which the judges should decide the case, we decree that they shall decide it as speedily as they can, so that the time may not be protracted more than three years from the day when they received it; for if, after this period has elapsed, they should desire to exercise their authority they should not do so. We also decree, that where the parties designate a special place for the examination of the suit by the arbitrators, the latter should decide and hear it there, and not elsewhere; and if a certain locality should not be indicated by them, then the arbitrators should proceed with the suit in the town or in the place where it was committed to their hands. When the arbitrators hear the case the parties should be summoned to be present, otherwise, they cannot proceed, except where at the time they were selected as arbitrators authority was granted to them to decide the case, even if the parties were not summoned.

LAW XXVIII.

What Arbitrators Should Do When One of Their Number Dies, or Enters a Religious Order Before the Case Committed to Their Hands is Decided, or for What Reasons Their Power Is Abrogated.

Where an arbitrator dies before the case placed in his hands has been decided, the survivors cannot afterwards proceed with it, because their power is abrogated by the death of their associate. But if, at the time they received the suit, the parties especially provided that if any of the arbitrators should die the others could decide the case, we decree that the survivors can do so. We also decree that the same rule applies where any one of the principal parties who committed the suit to the hands of the arbitrators, dies, and that, afterwards, they cannot decide the case, for the same reason which we have mentioned above, except where, at the time they were appointed, it was agreed upon by the parties that, even though one of them should die, the others could decide it, for then they can do so, having previously summoned the heirs of the deceased. Moreover, we decree that, if any of the arbitrators joins a religious order before the case is decided; or loses his liberty for any lawful reason and becomes a slave; or is banished forever, the same rule shall be observed, as when any arbitrator dies as we mentioned above. We also decree that where the property which was the subject of the controversy before the arbitrator is lost or dies, or if the party who claimed it should relinquish it to the other, entering into an agreement with him never to claim it again; the arbitrators must never afterwards interfere in order to decide that case, for their authority to determine it will be abrogated for any of these reasons.

LAW XXIX.

Arbitrators Should Be Compelled to Decide a Suit Which They Have Taken Into Their Hands, When They Are Not Willing to Do So.

Arbitrators should voluntarily, and without any compulsion, receive in their hands lawsuits and controversies of men in order to decide them, and although it is in their power, when they are chosen, not to accept this office if they do not desire to do so, after they have accepted it, they are bound to decide the cases even though they should not be willing. For

which reason we decree that when a party comes before an ordinary judge, and states that the arbitrators are prolonging his case, and though able to do so refuse to decide it, the ordinary judge should then send for them, and appoint a time for them to render their decision; and if they should be so obstinate as to be unwilling to do so, he should then compel them, by keeping them confined in a house until they dispose of the case. Where, however, the arbitrators happen to be equal in number, as, for instance, two, or four, and some wish to decide one way, and the others another, both sides being equally divided; in an instance of this kind we decree that the ordinary judges shall compel the parties, along with the arbitrators, to choose a good man who may be acceptable to all, to investigate the rights of both parties, and order them to come to an agreement in the decision of the case, and if they should not happen to agree the opinion of the majority shall prevail.

LAW XXX.

For What Reasons Arbitrators Should Not Be Compelled to Decide Cases Placed in Their Hands, if They Do Not Desire to Do So.

The ancient sages prescribed certain reasons why arbitrators may be lawfully excused from deciding cases placed in their hands, when they do not desire to do so. These are the following, namely: where the opposing parties, having submitted their case to them, bring the same case before an ordinary judge, by complaint and answer; for if they should afterwards desire to return to the court of the arbitrators, the latter cannot be compelled to hear the case, if they are not willing to do so. We decree that the same rule shall apply where, after a case has been committed to the hands of certain arbitrators, it is placed in charge of others; for then, although they may be willing to return to the first, these have no reason to hear the case, if they do not wish to do so, nor should they be compelled to hear it. Where, however, one of the parties, after the case has been placed in the hands of arbitrators, transfers this same suit to the court of the ordinary judge in opposition to the will of the other party, he will be liable to the penalty imposed in said suit when it was submitted to the arbitrators, and the latter should not afterwards be compelled to decide it.

We also decree that, where all the parties, or any one of them, show contempt for, or maltreat the arbitrators, the latter shall not afterwards be compelled to hear them, although they may repent, and subsequently desire to make reparation to them. We decree that this same rule shall be observed when any one of the arbitrators is obliged to go on a pilgrimage; or on an embassy of the king, or of his Council; or where he has to attend to some business concerning his property which he cannot avoid; or where he happens to be sick, or some other serious obstacle arises on account of which he cannot act in that lawsuit. For any of these reasons given by an arbitrator he should be excused, and should not be compelled to proceed with the case which he received in his hands, if he does not desire to do so.

LAW XXXI.

For What Reasons Arbitrators Should Be Forbidden to Act in Cases Placed in Their Hands, Although They May Be Willing to Decide Them.

Hatred is something which all persons should avoid. For this reason when any arbitrator is found to be an enemy of any of the parties, after a case has been placed in his hands, the said party can, and should denounce him before good men that he may not proceed with the case since he is sus-

picious of him for the reason we stated above; and if he refuses to withdraw on this account, the party who is afraid of him should bring the matter before the ordinary judge and he, after this has been proved, must forbid the arbitrator to act, from that time forward, in the said case. We also decree that either party who entertains any suspicion of the arbitrators, on account of any reward or gift which he alleges the other party has given or promised them, must proceed in a similar manner. Where an arbitrator is so obstinate that, after the ordinary judge has forbidden him to hear the case, he will not withdraw, any decision or order which he may subsequently make with reference to the same shall not be valid, and for this reason the party who does not obey it will not be liable to any penalty on that account.

LAW XXXII.

What Arbitrators Should Observe and Do When They Wish to Render a Decision.

Parties, when they place their case in the hands of arbitrators, may grant them permission that, though all may not be agreed when the time comes to render a decision, those who are agreed can do so; and we decree that no matter what was consented to by the parties in conferring the power to decide their case, the arbitrators ought to act accordingly and in no other way; but, where they did not make any conditions when the suit was placed in the hands of the said arbitrators, we declare that all the latter should be present when the decision is to be rendered, and whatever all, or the majority of them agree upon at that time, shall be binding. If not all are present then the decision will not be binding, even though a majority, and persons of higher rank than the others who did not agree to it, may be present. The ancient sages deemed this to be proper for the following reason, namely: since the suit was placed absolutely in the hands of all, the opinion of each one should be stated in court before they render their decision, because they may have given certain reasons there which would cause the decision to be rendered in another way if they had been present.

We also decree that arbitrators shall not render a decision on any of those days which are prohibited, and of which we spoke in the Title concerning plaintiffs, except where the same reasons exist for which ordinary judges may act.

When, however, arbitrators have been appointed in such a way that they can decide by arbitration all disputes arising between them in any manner they deem proper under such circumstances, we declare that their decision will be binding, even though it was rendered on a day when others are prohibited from deciding cases in court. We also decree that they should be very careful not to interfere in the settlement of any other case but the one committed to their hands, except such as relate to the fruits of the earth, or to income derived from the property concerning which the controversy exists between the parties; for just as they have authority to render a decision with regard to the principal property in dispute, so they have with respect to the fruits or other profits which spring from, or are derived from it. Moreover, we decree that, when the cases or disputes submitted to the arbitrators are many in number, they should be, and are, invested with authority to decide each of them, except where, at the time the suit was placed in their hands, the parties directed them to dispose of all at once; for then they would not have power to act, except in the way which was indicated to them in the beginning, when they were chosen.

LAW XXXIII.**Arbitrators Can, in Their Decision, Appoint a Time for the Parties to Pay or Perform What They Order Them to Do.**

Judges, in the decision which they render, direct the parties to the suit to give something, or to perform some act, and appoint a time for them to comply with the order. For this reason we decree that the parties must comply with it within the designated time, and the one who does not should pay to the other the penalty agreed upon between them, when they placed the case in the hands of friends. He cannot avoid this by stating that the judges have no power to appoint such a time, as they were not granted authority to fix it by reason of their office. Where they render judgment, and do not designate a time in which it must be complied with, we decree that the parties are entitled to a period of four months for that purpose, and after that term has expired, the party who is unwilling to obey what was ordered is liable to a penalty. Where, however, a demand is made for the penalty after the expiration of four months, for the reason that the order of the arbitrators was not obeyed; and the party of whom the penalty is demanded is willing to comply with the order without delay, he is not bound to pay said penalty, if he complies with it as stated; but if, after the time appointed by these judges has elapsed, the penalty is demanded of him he cannot avoid paying it, although he may state that he is willing to comply with their order. The ancient sages deemed this proper for the following reasons, namely: because it is a more serious thing to treat the order of a judge with contempt than the law by which he forms his decisions, as a man can more easily evade a legal penalty, when he becomes liable to it, than he can that which a judge imposes in his decision.

LAW XXXIV.**For What Reasons a Party Can Avoid Paying a Penalty, Although He Disobeys An Order of the Arbitrators.**

A party can avoid incurring the penalty which he agreed to when his case was placed in the hands of arbitrators, even though he does not comply with their order, or decision. This is the case when he is unable to comply with it through being prevented by some serious illness at that time; or because he was obliged to be absent in the service of the king, or of his Council, whose order he must obey; or where any other obstacle arises accidentally, which hinders him from compliance, and is one understood by the arbitrators to be lawful in order to excuse him. If, however, after he is free from any of the above named impediments, he should be unwilling to comply with the order he will then be liable to the penalty; and we also decree that where the order or decision of arbitrators is contrary to our law, or opposed to the law of nature or of good customs; or where it is so improper that it cannot be obeyed; or where it is rendered through fraud or based on false testimony, or in consideration of money; or relates to some matter which the parties have not submitted to the arbitrators; for any of these reasons, when ascertained, the order of the arbitrators will not be binding, nor will the party who refuses to obey it be liable to a penalty on this account.

LAW XXXV.

No One Can Appeal From the Decision of Arbitrators.

Parties are sometimes displeased with the judgment rendered by arbitrators against them, and appeal from it thinking they can do so; therefore, we decree that no one can take an appeal from the judgment of arbitrators, but whoever is not satisfied with it may pay the penalty agreed upon, and will not afterwards be required to obey it. Where no penalty was agreed upon at the time when the arbitrators were selected, we decree that in an instance of this kind, anyone who is not pleased with their decision must say so at once, and he will not afterwards be bound to comply with it. But when the parties approved of the decision, stating when it was rendered that they were pleased with it, and writing with their own hands in the said decision that they confirmed it; or where they kept silent for nine days after it was rendered, so that they did not manifest opposition to it, then a judgment of this kind shall be binding. And if either of the parties should afterwards ask the ordinary judge of the district to cause the order to be complied with, he should do so, just as if it had been rendered by another judge who had power to hear and decide all cases¹.

¹The Roman *arbitrator*, corresponded to the arbitrator of the common law, and his powers and functions do not vary, to any great extent, from those of the official of our day to whom questions are referred for amicable adjustment by the common consent of parties. He determined cases called *bonae fidei*, where the amount involved in the dispute was uncertain, in contradistinction to the ordinary judge, whose jurisdiction extended to *res certa*. In England, in former times, the title to real property could not pass by an award of arbitrators, a rule based upon feudal obligations which is no longer in force. The "good man" mentioned in the latter part of Law XXIX, is the umpire of the common law, who had sole jurisdiction of the case when appealed to; whereas, in the *Partidas* his duty was to compel the arbitrators to come to a decision by commanding them to agree, and, in case they still proved obstinate, to cast his vote with one side or the other to form a majority.

The Louisiana Code divides arbitrators into two classes, arbitrators proper, and amicable compounders, the latter being authorized to relax, to some extent and in accordance with equitable principles, the severity of the law. As in the *Partidas* the authority of arbitrators does not extend to any matter not submitted, and a penalty is fixed which must be paid by the party refusing to abide by the award. A minor is always required to appear by his guardian. By the Code the power of arbitrators expires after three months when no time is fixed; in the *Partidas* it is not abrogated until three years have elapsed; in both an award given afterwards is void. The same causes terminate the arbitration in both bodies of laws. (Civil Code of Louisiana 3066-3099).—Ed.

TITLE V.

Concerning Attorneys.

We have spoken sufficiently in detail in the preceding Titles of the principal persons without whom no judgment can be rendered, as designated by wise men; as, for instance, of the plaintiff and the defendant and the judge who decides between them, and now we intend to speak of other persons who are, as it were, assistants. And because, most frequently, the plaintiff or the defendant is not able, or is unwilling to appear himself and conduct his suit, before the judge, on account of some obstacle or annoyance he is afraid of encountering there, it becomes necessary for them to appoint others to act as agents¹ in their stead, and to assist them and attend to their cases. Wherefore, we desire to speak of such persons in this Title, and first to explain what an attorney is; why he is so called; who can appoint him; what kind of a man he should be; in what suits he should act; how he should be appointed, what it is that constitutes an attorney and how and when his office is terminated.

LAW I.

What an Attorney Is, and What the Word Means.

An attorney is one who makes collections, or attends to lawsuits or the business of others, by order of the owner, and he is called an attorney because he acts in court or out of it, as the representative of another person.¹

LAW II.

Who Can Appoint an Attorney.

Every man over twenty-five years of age, who is not under the control of another, as, for instance, his father or a guardian, and is free and in possession of his faculties, can be appointed an attorney in any lawsuit in which he is concerned. There are, however, certain cases in which a man who is under the control of his father can be appointed an attorney, as, for instance, where a suit is to be brought relating to property that belongs solely to the son and that the father has nothing to do with, which belongs to those matters called *castrense*, or *castrense peculium*, as explained in the Title treating of the power fathers have over their sons.

The same rule applies where a father sends his son to school, or despatches him to a distance for some other purpose, and something happens to him on the way, or while he is absent, on account of which he is obliged to bring an action against another party, or another party against him; or when a son is in the place where his father has his residence, or where he has property, and his father is not there or in the country at the time, and something occurs by reason of which he is compelled to institute legal proceedings in behalf of his father relating to said property, either by bringing a suit or defending one. In any of the above-mentioned cases a son can ask for, and appoint an attorney, to bring, as well as to defend, a suit in which either his father or he is interested, whenever his father is not present.

¹ The *personero* of the *Partidas*, like the *assertor* of the *Forum Judicum*, was rather an attorney-in-fact, than an attorney-at-law in the strict sense of the word, although in a general way he exercised the functions of the latter. During the early administration of Spanish justice parties conducted their own suits or appointed others, by powers of attorney, to do so for them. In those days no distinctive profession for the transaction of legal business existed and every person, not disqualified by age or some other disability, was presumed to be competent to present his side of a case in court. A deep-seated prejudice against lawyers, handed down from barbarian times, prevailed, and the incessant warfare which had, for centuries, afflicted the Peninsula was not favorable for the formation of a learned body of men whose occupation was largely dependent upon public tranquility and demanded leisure for the acquisition of legal knowledge, and the employment of its principles for the solution of the intricate questions of jurisprudence. The first trace of the organization of a Bar is discernible in the following Title.—Ed.

However, in matters in which the father is concerned, the son must give security that his father will ratify whatever he, or his attorney does. We also decree that a bishop, of his own authority, in all matters concerning himself, as well as a cathedral chapter, a convent, the masters of military orders who are elected by their monasteries, and councils, can, in all these instances, appoint attorneys in disputes in which they are interested, both in court and out of it.

LAW III.

How a Minor Under Twenty-five Years of Ages Can Appoint an Attorney for Himself, With the Advice of His Guardian.

Anyone under twenty-five years of age can appoint an attorney for himself, and if he appoints for himself without permission of his guardian, and the said attorney does anything in court which is for the advantage of the minor, it will be valid. But if judgment is rendered against him, or something else is done which results in his injury, arising from his appointment of the attorney, it will not be valid. We also decree that a guardian, cannot appoint an attorney to bring an action or answer in court for a minor, if, in the first place, he, himself, did not begin the suit either by complaint or answer; but, after he has done this, he can make such an appointment if he desires to do so.

LAW IV.

Anyone Claimed as a Slave Can Appoint an Attorney for Himself.

Where a man acts as if he were free, and does not live under the control of another, and someone institutes a suit against him claiming him as a slave, in an instance of this kind he, himself, can appoint an attorney for his own defence. We also decree that if he brings a suit against others involving money, or any other property whatsoever, he can appoint an attorney for himself, so that he can sue for it in court, and we declare that he can do this after issue has been joined by complaint and answer, in the case in which he is claimed as a slave. But where any one appears to be a slave and is in the power of another, even though he may wish to institute legal proceedings against the party having control of him in order to be liberated from slavery by stating that he is free, under these circumstances, we decree that though he can appear in court in his own behalf, he cannot appoint any one to act as his attorney. However, when a suit of this kind is instituted, the judge should compel the party having him in his power to appear in court, and take from him sufficient security, so that the other party may be able to conduct his case and establish his rights. We also decree that, where any relative of the alleged slave desires to conduct his case, stating that according to law he should be free, he can do so, although the other may not have especially appointed him his attorney. Wise men attached so much importance to freedom, that they not only deemed it proper that relatives should have authority to conduct suits for persons wrongfully held as slaves, without a power of attorney, but held that any stranger whosoever could do so, although he was no relative, for the reason that all the laws in the world constantly favor liberty.

LAW V.

Who Can Be an Attorney, and Who Is Forbidden to Act as Such.

Any man, not forbidden by any of the laws of this our book, can act as attorney for another. Those prohibited from doing so are the following, namely: anyone under twenty-five years of age; an insane person; one of

weak mind; one who is dumb; a person who is entirely deaf; and anyone accused of a grave crime while the accusation is still pending. We also decree that a woman cannot act as attorney for another party in court, except for such of her relatives in the direct ascending or descending line as are old or ill, or who suffer from some other serious impediment, and then only when there is no one else whom they can trust to conduct the case for them. Moreover, we declare that a woman can act as attorney to liberate her relatives from slavery, and can take and prosecute an appeal where sentence of death has been pronounced against any of them. We also decree that a person belonging to any religious order cannot act as attorney, except in some suit in which the order to which he belongs is interested, and even then he should do so by command of his superior whom he is required to obey. Moreover a priest ordained to read the Epistles or who is of higher rank, cannot be an attorney, except in a suit where either his church, his prelate, or his king is interested. We also decree that a slave cannot act as attorney for another party in court, except where he belongs to the king; but, in order to recover other property out of court which belongs to him or to his lord, he can do so. Moreover, we decree that, although a person may be claimed in court as a slave, if he behaves as if he was free, such a person has a right to act as attorney for another.

LAW VI.

Knights Stationed on the Frontier, or Who Are Employed in the Service of the King, Cannot Act as Attorneys for Others.

Knights receiving pay, who are in the service of the king or of other lords on the frontier, or elsewhere, cannot be attorneys for others in court during the time they are under the command of their lords wherever they may be, except where one of them is compelled to act in some matter which concerns the entire body of knights. However, after they have been withdrawn from the place where they were stationed, and have gone home and stay there, any knight can act as attorney for another party if he desires to do so, and all others remaining at home, and who are not especially engaged in the service of their lord, can also act as above stated. We decree that the same rule shall apply to knights at the Court of the King who perform some special service there, for none of these can act as attorneys for other parties, so long as they are so employed. This is prohibited in order that the service of the lord may not be interfered with by reason of such persons acting as attorneys, and also, that they may not annoy others by causing them expense, on account of their power and the acquaintance they have with those at court.

LAW VII.

In What Cases a Knight Can Act as Attorney for Another.

Although we stated in the preceding law that a knight engaged in the service of the king or of some other lord, or one who is employed at court, could not act as attorney for another, there are three instances in which he can do so. First, in order to liberate a relative of his from servitude from someone who claims him in court as a slave. Second, to defend, or set free by law, any man wrongfully condemned to death, who is imprisoned and denied a hearing. Third, where a knight has been appointed attorney in some suit, and the party against whom it was instituted, joins issue with him by complaint and answer and he does not decline to serve; for, from that time on, he cannot decline, even if he wishes to do so, but we decree that he must act as attorney in the case until it is determined.

LAW VIII.**Which Officials of the King Cannot Act as Attorneys for Others at Court.**

Neither *adelantados*, judges, chief clerks of the Court of the King, nor other officials who are powerful by reason of the offices they hold, can act as attorneys for others, in any suit in the King's Court, except where they are compelled to do so in one of the three instances mentioned in the preceding law. We forbid this for two reasons; first, that what they are required to do by virtue of their offices may not be interfered with on account of their acting as attorneys for others; second, because they can put the men whom they are required to act against as attorneys to great costs and hardships, by protracting the suits, by means of the power which they possess at court through the offices they hold, as we stated above.

LAW IX.**Persons Going on an Embassy Cannot Act as Attorneys for Others.**

A man appointed to go on any mission of the king, or on one for the general benefit of his Council, or of his country, after his appointment to said mission, cannot act as the attorney of another party in any suit in the place to which he is sent, or anywhere else, until after his return. This is the case in order that no obstacles may be thrown in his way in the performance of what he is charged with by his being employed in the suits of other parties, and neglecting that to which he should, first of all, pay attention.

LAW X.**What Persons Can Make Complaint and Answer for One Another Without a Power of Attorney.**

No man, of himself, can assume the power to act as the attorney of another, or bring suit for him in court, without permission of the party interested, except in the case of certain persons, as, for instance, where a husband acts for his wife, or one relative for another as far as the fourth degree, or for other parties connected by marriage; as where one acts for his father-in-law, his son-in-law or his brother-in-law, or for some man with whom he has a joint obligation, or in case of enfranchisement. For any one of the above-mentioned parties can bring suit in court for each other, although he may have no power of attorney, except where there is something which he desires to claim in opposition to the will of him in whose name he asks it. We decree that the same rule shall apply to those who are joint heirs or owners of the same real estate, or of any other property belonging to them in common.

However, every one of the persons above mentioned, before they come into court, must give security by sureties, under a certain penalty which they agree to do or pay, that he in whose behalf they make the claim will ratify whatever is alleged, performed, or decided in that suit; and if the other is not willing to agree to this, that the attorney and the sureties will pay to the defendant the penalty of the obligation, and when this security is given to the other party, he having demanded it before issue was joined, the plaintiff's case should be heard; for where such security is demanded after the suit is begun he should not be required to give it.

What we have stated above applies where one party desires to bring suit in behalf of another; but in order to answer and set up a defense for another who has been summoned and does not proceed, any man can act in court even

though he is not a relative, or holds no power of attorney from the party, if he gives security that the said party will ratify whatever is done in court, and will pay any judgment that may be rendered against him.

LAW XI.

What Eminent Personages Should Not Conduct Their Cases Themselves, But Should Appoint Attorneys to Do This in Their Stead.

A king, or a king's son, an archbishop or a bishop, a nobleman or a lord having knights under his command and who holds lands of the king, a master or a grand commander of any order, or any other distinguished man of a town, who holds office by the appointment of the king, cannot take part in a lawsuit by conducting it himself along with others of inferior rank; excepting where some one is compelled to do so in a suit affecting his reputation, or his person, and designated, in Latin, a criminal case; but in other instances, where real or personal property is involved, they should appoint attorneys to conduct their suits for them.¹ There are two reasons for this; first, because the party of inferior station in the course of his argument while defending his suit, may happen to say something against the party of higher rank that will reflect upon him in a dishonorable way; second, because of the power of the superior party, or influenced by his own fears, the party of inferior station will not dare thoroughly to present his case, for he may not find anyone to conduct it for him, and for that reason may lose it, or be injured in his rights.

We, however, deem it proper that every one of the persons aforesaid should be present while their cases are being argued, in order to advise and correct their attorneys in those matters which they are familiar with, so that this may be done with justice; and, moreover, that they may answer the questions put to them by the judge or the king, for the purpose of ascertaining the truth of the matter. On the other hand, none of these above named persons can act as attorney for another party, for the same reasons which we have previously stated, except in a case where the king is concerned, or some widow or orphan, or some other wretched or afflicted person who has suffered great wrong, and cannot find anyone to act for them, is interested.

LAW XII.

In What Lawsuits Attorneys Can Be Appointed, and in What Ones They Cannot.

There are certain lawsuits in which attorneys can be appointed, and others in which they cannot. Wherefore we decree that in every suit brought by one party against another, whether it be for immovables or movables, an attorney can be appointed to prosecute the claim in court. But in a suit which may involve the sentence of death, or loss of limb, or perpetual banishment from the country, whether it be instituted by way of accusation, or by impeachment, an attorney should not be appointed; but we decree that every man is bound to prosecute, or to defend himself in a suit of this kind in his own proper person and not by an attorney, for the reason that punishment cannot be lawfully inflicted upon anyone but the party who commits the offence when he is proved to be guilty, nor on anyone but the accuser when he makes a false

¹ This provision of the *Partidas*, forbidding the appearance of persons of high rank and members of the clergy in court, in their own behalf, is taken from the Visigothic Code. The language of the latter is, however, more general than that of the later treatise. "*Si ergo Principem vel Epsicopum cum aliquibus constiterit habere negotium, ipsi pro suis personis eligant, quibus negotia sua dicenda committant, quia tantis culminibus videri poterit contumelia inrogari, si contra eos vilior persona in contradictione causas videatur adistere.*" (For. Jud. II-3-1.)—Ed.

accusation. Where, however, a man is accused or impeached in a suit of this kind, as above stated, and is not present in the place where the accusation was made, then his attorney, or any other man who desires to do so, can defend him, argue his case, or allege in his behalf any lawful excuse, if any should exist, why the defendant does not appear; and the judge can designate a time within which the excuse offered for him may be investigated, and if it is proved, he should allow it in favor of the accused party. But although this can be done for the purpose of excusing the accused party, nevertheless, such a person cannot prosecute or defend a suit of this kind as attorney for him in any other way. We also decree that neither a minor under the age of twenty-five, nor a woman, can act as attorney for another, yet, in an instance like that above-stated, they can appear for the defendant in court, and allege for him any lawful excuse for not coming at the appointed time, but they cannot defend him in the case in which he is accused. We decree, moreover, that when the term of office of a judge, which he has held in any district, expires, and any party complains of him, by reason of the office which he held there, within the fifty days which he is required to pass in the district after this for the purpose of making reparation to persons having complaints against him, he should defend himself, and answer in court in his own proper person, and cannot appoint an attorney to act for him in suits brought against him during the said term of fifty days.

LAW XIII.

In What Way an Attorney Can Be Appointed.

The way in which one man can appoint another his attorney, is as follows, to-wit: he must state particularly whom he wishes to appoint his attorney, and this he can do, although the party may not be present, just as well as if he were. When he appoints him verbally while he is present, or in writing when he is elsewhere, he should repeat the following words while doing so: "I ask, or I wish, or I order, So-and-So, to act as my attorney, in such-and-such a lawsuit of mine, or appoint him my attorney, or I grant him power to act as such"; or he should use other words similar to these, or he can do this by a trusty messenger. In whichever of the above mentioned ways he may act, he can appoint the party as his attorney perpetually, or during a stated period, and he can also make the appointment conditionally or unconditionally.

LAW XIV.

In What Way a Power of Attorney Should Be Drawn Up, and How Many Things Should Be Stated in It.

In order that judges may be assured that a power of attorney is complete, we desire to state in this law how it should be drawn up, and we decree that this can be done in three different ways. First, by the notary public of a council; second, by any other notary whomsoever; but it must be sealed with the seal of the king, or with that of some other lord of the country, or of some archbishop, bishop or other prelate, or of the master of some order, or with another seal of some council; third, when one of the parties appoints his attorney in the presence of the judge, and orders it to be recorded in the registry of the magistrate before whom he appoints him. When a power of attorney is drawn up by a notary public, or sealed with any of the above mentioned seals, it should contain the name of the party who appoints the attorney, that of him who is appointed, the name of his adversary, the suit in which he appoints him his attorney, and the name of the judge before whom the case is to

he tried, and whether he grants him authority to petition and answer, or to confess or deny. It should also be stated at the end of the power of attorney that it will be valid so long as the attorney will act in and conduct that case, and that he binds himself and all his property for the compliance with everything decided against him in the said suit, and, above all, it should contain the place, day, and era in which it was executed.

When one of the parties appoints his attorney in presence of the judge, in the third way which we have above mentioned, it will be sufficient for him to say, and to have placed on record: "So-and-So appoints So-and-So his attorney, in a suit which he has before So-and-So Judge, against such-and-such an adversary;" for, by words of this kind the attorney has as complete authority to begin and prosecute a suit, as if all the other matters which we mentioned above had been stated, and committed to writing. Where a power of attorney is drawn up by the hand of a notary public, it should contain the names of the witnesses in whose presence this was ordered to be done.

LAW XV.

In What Way an Attorney Should Be Appointed Who Is to Bring Suit in Court for Restitution in Behalf of a Minor.

Where any attorney desires to bring suit in court for damages, loss, injury, or fraud committed against a minor under twenty-five years of age, and authority to do this was not specifically granted him in his power of attorney, although it may contain the general provisions we stated in the preceding law, he cannot act in such a proceeding. For which reason we decree that when a minor desires to appoint any one his attorney, with the consent of the person acting as his guardian, in order to bring suit to set aside some judgment rendered to his injury, or some injurious contract or agreement entered into against him; in any of the above-named instances, or in others similar to them, it should be stated in the power of attorney that the attorney is especially appointed to demand in said suit, reparation, damages, delivery of property, or the setting aside of a judgment, and it should also contain all the other words which we mentioned in the preceding law. A delivery of this kind is called, in Latin, *restitutio*.

LAW XVI.

How a Father Can Appoint an Attorney to Bring Suit to Recover His Son, Whom Another Holds Against His Will.

Where any person keeps the son of another in his house or in his power, contrary to his father's will, if his father wishes to bring suit to recover him, by his attorney, it is proper that a power of attorney granting such authority contain two things. First, that special power is granted the attorney to bring an action of this kind; for, even though he was granted a general power of attorney over all matters, he could not institute such a suit, unless this was specifically stated in the power of attorney. Second, where the father is under some lawful impediment, on account of which, he cannot in his own proper person bring suit to recover his son, and this must be inserted in the power of attorney, for where an excuse of this kind does not exist the attorney should not be permitted to act, for the party should bring suit for this himself, and not by another.

LAW XVII.**In What Way a Power of Attorney Should Be Drawn Up, When It Is Desired to Accuse the Guardian of a Minor of Being a Suspected Person.**

Where a man desires to prefer charges against another, who is a guardian of minors, in order to remove him from office because he is a suspected person, a suit for this purpose should be brought by himself, and not by an attorney on whom he has conferred general authority to act for him in court. If, however, it should be specifically stated in the power of attorney that authority is granted him to accuse another of being a suspected person, then a power of attorney of this kind will be valid, and the judges ought to admit it.

LAW XVIII.**In What Way Several Attorneys May Be Appointed in a Lawsuit.**

A man can appoint several attorneys to bring suit, and answer in a case in court, or only one, if he so desires. But when he appoints several we decree that if he makes the statement, or specifically grants authority for each one of them to act as attorney in the whole suit, in this instance the one who begins it, in the first place, is required to prosecute it until it is terminated, and the others should not concern themselves with it. But where all together begin the suit either by petition or answer, from that time forward any one of them can conduct it to its conclusion, even though the others are not present. Where, however, all the attorneys join in the suit, and the other party feels aggrieved by reason of having to argue the case against the entire number, one of them should be appointed to conduct it, and if they cannot agree in making a choice, the judge may select the one whom he thinks will do this best. When it is not stated in the power of attorney that the party bringing the suit appoints the said attorneys each one with full authority, then none of them can sue, or defend, except just so far as he is authorized; but if attorneys of this kind wish to bring suit in a body they can do so, they being present, or they may appoint one, with the consent of all, to conduct the case.

LAW XIX.**What an Attorney Has Power To Do.**

An attorney cannot state, do, or submit to judgment more things in a suit than are permitted by his authority, or the directions included in his power of attorney, and if he exceeds that authority his acts will not be valid. For this reason we decree that where an attorney desires to come to terms with his adversary, to enter into any contract with him, to release him from his claim, or to make oath for the purpose of dismissing the case, he cannot do so, except where the party to the suit has especially granted him power to do these things; or where, in the power of attorney, he conferred upon him full and free authority to do everything in the suit that he himself had power to do; for, when words of this kind are made use of, he certainly has authority to perform any one of the acts aforesaid.

We also decree that an attorney cannot appoint another in his stead in a suit in which he was appointed, if, in the first place, he has not begun it either by complaint or answer. But where such power had been conferred upon him he can then do this before, or afterwards. This applies where attorneys are appointed to prosecute suits in court; but where others are appointed to collect claims, or perform other acts out of court, they can appoint other attorneys, in

their stead, whenever they desire to do so, and whatever is done by them will be just as valid as if it were done by those who appointed them. If, however, the latter should do anything to the injury of their lord, then the first attorneys who selected them and appointed them in their places, will be responsible. We also decree that attorneys who are appointed to attend to business out of court, must be over seventeen years of age, but the others appointed to bring suit or answer in court, must be at least twenty-five years old.

LAW XX.

When What One Man Does in Behalf of Another in Court Is Valid, Although He May Not Have Received a Power of Attorney for That Purpose.

No property can be made the object of a suit in court by anyone without the permission of its owner, as we stated in the preceding law. Where, however, any person comes into court as the attorney of another, and the party against whom the suit is brought defends it, not serving notice upon him that he should be appointed attorney for the party for whom he brings the action; and, after this, the latter comes and asks that what was done in his behalf be confirmed, everything done in court will be valid just as if he had appointed the said person his attorney, excepting where he who brought the suit is a slave, or one of those forbidden to act as an attorney for others.

LAW XXI.

For What Things an Attorney Has No Authority to Bring Suit, or Set Up a Defense in Court, if He Has Not in the First Place Given Sureties.

Attorneys sometimes produce powers of attorney in court, which are ambiguous, badly drawn, or defective, so that it cannot be definitely ascertained whether they are valid or not. And for the reason that matters transacted before judges should be certain, so that they may be valid; we decree that when doubt arises in an instance of this kind authority shall not be given to such an attorney who makes a claim against the other party which the latter denies, unless he, in the first place, gives sureties, or security, that the party who appointed him will abide by, and confirm what he does in the case.

When, however, his authority is definite the attorney should be permitted to bring the suit and no obstacles should be placed in his way, or any other security required, except where the attorney of the plaintiff is not willing to give sureties to answer and defend the latter in suits which the other party declares he intends to bring before that judge against the said person who appointed him attorney; for then it is but just that, as he refused to give security to answer in court for the said plaintiff, so he cannot bring suit in his behalf. What we have stated in this law has reference to the attorneys for the plaintiff, but the attorney for the defendant, whether he produces a perfect power of attorney or not, must always give security, either by sureties or by pledges, that he will, in every respect, comply with whatever is rendered against him in the suit in which he is defendant; except where, he who appointed him attorney states specifically in the power of attorney, that he, himself, will act as his surety, to comply with, and pay the judgment in the suit, for, in this case, no other security should be required of him.

LAW XXII.**Attorneys Should Answer with Certainty in Suits Brought Against Them, and Where They Are Unwilling to Answer, or Do Not Possess Information, the Party to the Suit Is Bound to Do So.**

Attorneys should answer positively the demands and questions made to them in court, if they have the requisite knowledge. And for the reason that persons sometimes exert themselves maliciously to prolong suits by concealing or withholding the truth, we decree that when, in an instance of this kind, any of the parties asks the judge to order the party of the suit to appear and answer questions, or states that the party aforesaid is a trustworthy man and will not deny the truth, and that the attorney is obstinate, or not acquainted with the facts; under such circumstances the judge should grant his request.

Where the principal party to the suit is in the neighborhood, we declare that the judge may use force, and compel him to appear before him and answer questions. If he is in some other place where there is another judge, he should cause the questions offered before him to be written down, and send them under his seal to the other judge in whose jurisdiction the party whom it is desired to interrogate is at the time, asking him to compel the said party to appear before him, and, after he has caused him to be sworn, force him to answer said questions, and send to him the answers in writing, sealed with his seal; and we decree that the judge who receives the letter is required to act as above stated.

LAW XXIII.**When the Office of Attorney Is Terminated.**

When a party to a suit dies before his attorney begins it, either by complaint or answer, the office of attorney is terminated for this reason, so that he neither can, nor should, proceed farther with the case. But where he dies after the suit has been begun by answer, an attorney does not lose his authority, but we decree that he must prosecute the suit until it is terminated, just as if the party who appointed him attorney were living, although he may not have received any new instructions from the heirs of the deceased.

We also decree, that where an attorney dies before an answer has been filed in the suit, his office is terminated, but where he dies after this has been done his heirs should, and have the power to, complete what he began, if they are men qualified to do so. We also decree that the office of attorney is terminated as soon as a judge renders final judgment in the case in which he was appointed attorney; but when judgment is rendered against him, or against the party for whom he is acting as attorney, he should appeal, and he can do this even though authority was not given him in the power of attorney to do so, but he cannot prosecute the appeal without the permission of the party to the suit. His office is also terminated when the party to the suit revokes his authority and appoints another in his stead, or where he, himself, of his own accord, relinquishes his employment on account of some lawful impediment which prevents him from acting.

LAW XXIV.**In What Way a Party to a Suit Can Remove an Attorney Whom He Has Appointed, and Appoint Another.**

When a man especially appoints another his attorney in some action at law, and afterwards appoints another in the same action, he deprives the first of authority, and confers it upon the second. If, however, he wishes to remove

him in this way, he should communicate the fact to his judge and to his adversary, and where he does not thus make it known, the statements or acts of the attorney first appointed in the suit shall be valid, just as if he had not been removed. We also decree that if the first attorney has begun the suit either by complaint or answer, and the party to the same desires to revoke his authority and confer it upon another, he can do so, except where the other party against whom the suit was begun objects to this, saying that he cannot conduct his case against so many attorneys; or where the attorney considers himself dishonored, claiming that his principal desired to remove him because he was liable to suspicion. The party ought then either to investigate the suspicion, or state openly that he has no cause of complaint against him and does not remove him because of suspicion, and where he does this, he can remove him and appoint another.

We also decree that where the party who appointed the attorney has any lawful reason for which he desires to make a change, he should act upon it, although the suit may have already been begun, by complaint and answer. The following are such reasons, namely; where he finds that the first attorney is in the power of his enemies, or is in prison, or has gone on a pilgrimage, or is hindered by some illness, or is compelled to prosecute his own lawsuits so that he cannot attend to the one in which the party who appointed him attorney is concerned, or has become his enemy or the friend of his adversary, by reason of some marriage which he has recently contracted. Thus, for any of the reasons aforesaid, or for others like them, the authority of the first attorney can be revoked, and conferred upon another, even though the attorney himself and the other party oppose it. But where the suit has not been commenced by complaint and answer, a party has the power to revoke the authority of one attorney and confer it upon another, whenever he desires to do so, though he may not assign any reason for his act. We decree that the same rule shall apply to an attorney if he desires to give up his employment on account of illness or any other impediment of those we have mentioned which he may labor under, and he can do this, having first communicated his intention to the party to the suit.

LAW XXV.

An Attorney Should Keep an Account of All Property Obtained by Judgment, and Deliver it to the Party to the Suit.

Just as an attorney or agent, appointed to make collections out of court, is bound to give an account of them to him to whom they belong; so an attorney who is appointed in court is required to render an account to the party to the suit of everything which he receives, or has in his possession, which is obtained through the case in which he is attorney; or, where the other party is compelled to pay the costs or expenses, or anything else, all that an attorney obtains from this source he is required to deliver to the principal in the suit. We also decree that, in addition to this, he is required to give him and assign to him, all rights of every description whatsoever, arising out of the said suit, which he may obtain by judgment.

We also decree that all the expenses incurred by said attorney in prosecuting the case, which are just and reasonable, he who appointed him his attorney is bound to pay; except where he has incurred them, or paid them through some fault which he himself has committed; as, for instance, where he was ordered to pay the costs or expenses, or any other penalty, because of his obstinancy or his guilt; for it is but just that a man should suffer the injury arising from his own errors, and not ask reparation from others on

that account. If, however, the attorney has entered into an agreement with the party to the suit, with regard to any expenses he may incur, or any injury he may suffer in the prosecution of the same, we decree that the contract shall be observed.

LAW XXVI.

Attorneys Are Required to Make Reparation to the Parties to a Suit for Whatever Has Been Lost or Diminished in Value Through Their Fault or Fraudulent Conduct.

Attorneys should be neither negligent nor idle in the suits of which they take charge, but should conduct them faithfully and with diligence, for if the party to a suit should lose, or suffer in any of his rights through their fraud or fault, they are bound to indemnify him out of their own property. But where, for some other reason, which is not the result of their fraud or fault, the suit is lost, or fails of success, the attorneys are not required for this reason to make any reparation whatever.

LAW XXVII.

Out of Whose Property a Judgment Rendered Against the Attorney of the Defendant Should Be Satisfied.

Where judgment is rendered against the attorney of the party against whom suit is brought, and in which he was regularly appointed, we decree that it shall be satisfied only out of the property of him who appointed the said attorney. Where sufficient of his property is not found with which to satisfy the judgment, then the balance should be paid out of the property of the sureties given by the attorney for the defendant, and not out of the property of the attorney. But where a man voluntarily appears to defend the suits of others, without any power of attorney and without the order of the party to the suit, any judgment rendered against him should be satisfied out of the property of said person, or of his sureties, according to the terms of their obligation, and not out of the property of the party to the suit. And if the said person making the defence should subsequently desire to ask the party whose suit he defended to make good to him anything which he says he expended in his behalf in the suit in which he was beaten, the other party will not be required to reimburse him; if, however, such a person should gain the suit, the party for whom he acts will be required to pay the costs and expenses lawfully incurred in defending it; although he may be unwilling to do so, and he cannot avoid this by saying that he did not give the suit in charge of the person who defended it, or authorize him to act as his attorney, but he is bound to do this, since, through his efforts, he achieved success and good fortune.

TITLE VI.

Concerning Advocates.

Parties to actions at law are not only assisted by attorneys, of whom we spoke in the preceding Title, but also by advocates. And for the reason that the office of advocate is one that is very useful in affecting the determination of lawsuits, and productive of more certainty when the advocates are good men and act loyally, for the reason that they advise the judges and open the way to them for the more rapid disposition of cases; therefore the wise men of the ancients, who made the laws, deemed it proper that they should make the arguments for others, and discuss cases in court for both the plaintiffs and the defendants, so that the parties to a suit through want of knowing how to reason, or from fear or timidity, or on account of not being accustomed to suits, may not lose their rights. And since such advantages result from their calling, when they practice it justly, as they should do, we desire to speak in this Title of advocates, and to explain, in the first place, what an advocate is; why he is so called; who can act as one, and who cannot; in what way the advocates for the plaintiff as well as for the defendant should make their arguments and allegations; when an advocate through mistake states anything in court which may injure his cause, how he can correct it; why an advocate should not reveal any secrets of his client in a lawsuit to the other; for what reason a judge can forbid an advocate to make an argument for another party in court, what compensation he is entitled to if he does his duty well, and what penalty he should incur if he does it badly.

LAW I.

What an Advocate Is, and Why He Is So Called.

An advocate is a man who argues the case of another or his own in court, acting either for the plaintiff or defendant, and he is so called because he employs words and speech in the performance of his duty.

LAW II.

Who Can Be an Advocate, and Who Cannot Be One Either For Himself, or for Another Person.

Every man who is acquainted with the laws, the fuero, or the customs of the country, and has been familiar with them for a long time, can act as advocate for another person, except where he is under seventeen years of age; or is so deaf that he can hear nothing; or is insane, or deficient in intellect; or has been placed in charge of another on account of being a spendthrift; for none of these should be an advocate either for himself, or for another person. We also decree that no monk, or regular canon can act as an advocate for himself or for others, except for monasteries or churches where he makes his residence, or for other establishments which belong to them.

LAW III.

Who Cannot Act as Advocates for Others, But Can Act as Such for Themselves.

No woman, however learned she may be, can act as an advocate for others in court. There are two reasons for this; first, because it is neither proper nor honorable for a woman to assume masculine duties, mingling publicly with

men in order to argue cases for others; second, because in ancient times the wise men forbade it, on account of a woman called Calphurnia, who was very learned, and who was so shameless that she annoyed the judges with her speeches, so that they could not do anything with her. Therefore, mindful of the first reason which we stated in this law, and, moreover, seeing that when women lose their modesty it is a difficult matter to listen to them and dispute with them; and taking warning from the annoyance which they suffered from the speeches of Calphurnia, they forbade any woman from making an argument for another person.

We also decree that anyone who is blind in both eyes cannot act as advocate for another, for, since he cannot see the judge, he will not be able to show him, or the other good men who are present, the honor which he should. We decree that the same rule shall apply to the case of anyone convicted of adultery, treason, treachery, falsehood, homicide wrongfully committed, or other offences as serious as these, or greater than any of them. However, although none of these persons can act as advocates for others, they can certainly appear for themselves if they desire to do so, by either claiming or defending their rights.

LAW IV.

He Who Fights with a Wild Beast for a Reward Cannot Act as Advocate for Another, Except in Special Cases.

No one can act as advocate for another who has received a reward for fighting with a beast, except where he has to argue a case in which a minor, of whom he is the guardian, is interested. A man of this kind is forbidden to act as advocate for the reason that it is certain that anyone who imperils himself by fighting with a wild beast for a reward, will not hesitate to accept one for committing fraud, or gratifying hatred, in suits which he has to argue. However, anyone who fights with a wild beast not for a reward, but to show his strength, or where he receives compensation for fighting with a beast of this kind which was dangerous to the people of any country; in neither of these two instances should be prevented from acting as an advocate, for a person of this kind subjects himself to risk rather to confer some benefit than from covetousness of money.

LAW V.

What Advocates Can Act for Themselves, and Have Not Power to Act for Others, Except for Particular Persons.

Any person who has been rendered infamous, on account of a less serious crime than any of those which we have mentioned in the third law preceding this one, as, for instance, where he has been convicted of theft or robbery of which he was guilty, or through some wrong, fraud, or dishonorable act which he has committed against some one, for instance stating that he was trifling in speech, or in some other way, or for some other offence like these by which he would be deemed degraded, according to the *fuero* of Spain; none of these things will prevent him from acting as advocate for himself or for another, in special cases, as where he is obliged to appear in a suit in which one of his relatives in the direct ascending or descending line is interested, or in one concerning any of his brothers or sisters, or his wife, or his father-in-law or mother-in-law, or his son-in-law or daughter-in-law, or his stepson by marriage, or his stepfather, or the person who emancipated him, or any of his children, or a minor whom he has charge of as guardian. If he desires to act

as advocate for any person not included in those above named, he should not be considered competent to do so, even where the other party against whom he desires to make an argument, gives his consent. Moreover, we decree that neither a Jew nor a Moor can act as advocate for any man who is a Christian, although he has power to act in his own behalf, and for others belonging to his religion.

LAW VI.

A Judge Should Appoint an Advocate Where a Party Asks Him to Do So.

Widows, orphans, and other persons in affliction are sometimes compelled to prosecute their cases in court, and because those with whom they are forced to contend are powerful, it may happen that they cannot find an advocate who will venture to argue their cases for them, for which reason we decree that judges should appoint an advocate for any of the persons aforesaid who asks him to do so; and the advocate who is appointed by the judge should make the argument for the said person for a moderate compensation. Where the person is in such distress that he has not the means to make payment, the judge should order the advocate to do this for the love of God, and he is bound to do so. If the party has anything with which to pay the advocate, we decree that the amount shall be agreed upon between them.

LAW VII.

In What Way Advocates Should Argue Cases in Court for the Plaintiff and for the Defendant.

The offices of judges and advocates are distinct, for advocates should make their arguments standing before those who have the power to sit in judgment, and judges should hear and determine cases while seated, as stated in the Title which treats of them. For this reason we decree that, when judges order the parties to make all the statements and arguments which they desire to advance in any suit, the plaintiff, or his advocate, should rise first and make his statements and arguments, and, in the beginning of his speech, he should ask the judge and the others there present to listen to what he has to say in the case until he has finished; for as the wise men of the ancients declared he who speaks his words in the presence of others loses the time in which he utters them if they do not hear him well, and understand them, and, moreover, it reflects upon him as something disgraceful. After this he should state his case and how it originated, and adduce his arguments as clearly as he can.

Where there are several advocates for one party, one of them, and no more, should make the argument, and all should agree in what way he whose duty it is to make the argument should present it. He should be very careful not to use insolent words, except such as are connected with the suit, and he should, moreover, address the judge quietly and politely, and not in loud tones, nor with so low a voice that he cannot be heard.

After he has fully stated his case, the advocate of the defendant should rise and submit his defence, arguing the matters which concern his side of the suit, in the same way in which we have indicated that the advocate of the plaintiff should do. And, above all, we declare that neither of them should disturb, or place obstacles in the way of the other, while he is speaking, and, moreover, that he should be careful not to use wicked and abusive language, except where it relates to the suit, and cannot be avoided. An advocate who speaks in this way should be honored by the judge, and his arguments should prevail, and he should forbid those who act otherwise to argue cases before him.

LAW VIII.**How an Advocate Can Repudiate Any Words Uttered by Mistake in Court, Which May Injure the Party for Whom He Appears.**

Advocates should carefully consider, and diligently examine the words and arguments which they employ in cases which they have to argue in court, in the presence of those for whom they are acting as advocates, before they utter such words or speeches, in order that they may be to the advantage of the party for whom they appear; and if they are of this kind they should make use of them, otherwise they had better remain silent. For every statement made by an advocate in court, in the presence of the party interested in the suit, where the latter on hearing it, does not contradict it, is as valid, and for this reason should be as binding, as if the party to the suit had uttered it with his own mouth. But where an advocate or a party to a suit, by mistake, makes a statement in court which may be to the prejudice of him for whom he is making the argument, he has undoubtedly power to correct it in any place where the lawsuit is heard, before a final decision is rendered, having first called attention to the mistake; but, after a decision has been given, the mistake cannot be corrected, nor should it be considered except in the case of an orphan under twenty-five years of age; for, in a suit of this kind, it should be heard after a decision has been rendered just as it would have been before.

LAW IX.**An Advocate Should Not Reveal Any Secret of His Client in a Lawsuit to the Other Party.**

It is proper and just that advocates, to whom men confide the secrets of their suits, should keep them and not reveal them to the other party, or be guilty of fraud in any way whatsoever, so that the party who trusts them and whose advocates they are may lose his suit, or be placed at a disadvantage through their conduct; for, since they accepted the case from him in faith and truth, they should not act as advisers or informants of the other party. And we order that anyone who does otherwise after the charge has been proved, shall, from that time forward, be considered a man of bad reputation, and can never act as advocate or counsellor in any suit; and, moreover, that the judge of the district can impose upon him such a penalty as he thinks he deserves, according to the nature of the case in which he acted as advocate, and the offense which he maliciously committed while engaged in it. We also decree, that if the party who appointed him his advocate should suffer in his rights in any way by reason of the above-mentioned fraud, or a judgment has been rendered against him, it shall be revoked, and not executed, and the suit be placed in the same condition in which it was before the fraud was committed, if the latter is proved.

LAW X.**Whether He Who Has Acted as Advocate for, or Is Familiar with the Case of, One Party Can, Without Impropriety, Act as Advocate for the Other Party in the Same Suit.**

Men sometimes go to advocates, explain their cases to them, and reveal their secrets in order the better to obtain advice and assistance from them, and it happens occasionally that, after the latter have become acquainted with the facts, they conduct themselves maliciously stating that they will not assist them, except for an unreasonable fee. In an instance of this kind we decree

that where a party has disclosed his case to an advocate, and is willing to pay him a suitable fee or offers security for the same, with good men as sureties, then the advocate is required to assist him, and advise him well and faithfully.

Where, however, anyone acts in this way through malice, stating and revealing matters relating to the suit to several advocates, in order that the other party may not have an opportunity to employ any of them; we order that a judge shall not tolerate a fraud of this kind, and that he appoint such advocates to act for the other party, if he should desire them, even though they may be acquainted with the facts of the suit which are in possession of the other side, as above stated. We also decree that, where an advocate has accepted employment against a party to a suit, and the latter dies before the case is decided, and the sons of the deceased are placed in charge of the said advocate for any of the reasons stated in the laws of this our book which treat of the guardianship of minors; the said advocate has power to act in that capacity in behalf of said minors, and in opposition to the other party whose advocate or counsellor he had previously been in that same suit.

LAW XI.

For What Reasons a Judge Can Forbid an Advocate, for All Time, from Acting in That Capacity for Another in Court.

Where it has been proved against a judge that he knowingly stated anything contrary to law in any suits which he heard, and which he should not have done, or that he failed to perform what he was legally required to do, we forbid him, from that time forward, to act as advocate in any action at law. We do this in order that it may be understood that, as he knowingly erred in rendering his decision, he would not be faithful in the argument of cases. Moreover, we decree that, where a judge pronounces sentence against an advocate as being a man of bad reputation, or for any other lawful reason, forbidding him henceforth to act as advocate, and the latter does not appeal from his decision; from that time forward, he cannot act in this capacity for others, except for such persons as we have specified above, unless the king shows him grace by granting him authority to do so.

LAW XII.

For What Reasons Judges Can Prohibit Advocates from Performing Their Duties Until a Certain Time.

Where a judge forbids an advocate, for some lawful reason, to appear before him until a certain time has elapsed; as when he does this because the said advocate was very annoying, or interfered with suits, or was too loquacious, or for some other reason of this kind, he cannot afterwards appear before him until the time he fixed has elapsed, he can, however, appear before anyone whom this same judge appoints to act in his stead, or before any other judge whomsoever.

LAW XIII.

No One Should Be Recognized as an Advocate, if, Permission Has Not Previously Been Granted Him to Act as Such.

Those are disturbers and fomenters of lawsuits who become advocates and are not acquainted with the laws, the fueros, or the customs which should be observed in court. For this reason we order that, henceforth, no one shall venture to attempt to act as advocate for another, in any case, unless he

has first been selected by the judges and men learned in the law belonging to our Court, or those of the countries, cities, or towns, in which he is to act as advocate. He who is found to be learned, or a man fit for the place, shall be compelled to swear that he will aid, well and faithfully, every person to whom he promises his assistance, and that he will not knowingly act as advocate in any suit which is fraudulent or false, or which he thinks cannot have a good termination; and also that whatever genuine cases he accepts he will exert himself to have speedily determined, without any malicious delay on his part. We order that the name of the person selected in this manner, shall be recorded in the book where the names of other advocates, upon whom authority of this kind has been conferred, are inscribed; and we also direct that where anyone, of himself, desires to assume the power to conduct a suit for another against this Our command, he shall not be heard, and that judges shall not permit him to act as an advocate before them.

LAW XIV.

What Compensation Advocates Should Receive When They Perform Their Duties Properly, and What Agreement They Are Forbidden to Make with the Party Whom They Assist.

A party should acknowledge the service performed by an advocate in a suit, when he acts faithfully, by rewarding him and paying him his fee, according to his agreement with him. And, for the reason that men, through their desire to gain suits and sometimes influenced by the artifice of advocates, promise the latter larger fees than they should do, or make contracts with them to their own prejudice; we order that an advocate must accept a fee from his client in proportion to the character of the suit, whether it is important or trifling, and one in proportion to his learning or to the labor which he performs, so that the largest fee that he can accept should not amount to more than a hundred maradevis, no matter how large the claim may be, and below that sum according to the nature of the suit. We also forbid any advocate to make a contract with a party to a suit to receive any portion of the property concerning which the action is brought, for the reason that the wise men of the ancients were of the opinion that when an advocate made an argument where such a contract existed, he would exert himself to do everything in order to gain the suit, by foul means or fair. They also forbade this for another reason, because if advocates were permitted to make a contract of this kind with the parties for whom they appear, no one could find one, who would be willing to argue his case, or assist him in any other way, except under such an agreement, which would be contrary to justice and a very injurious thing for the people.¹ Where, however, an advocate ventures to make a contract of this kind with the party for whom he appears, we order that, after this has been proved, he shall not have authority to argue a case for anyone else in court, as being an infamous person, and, moreover, that the contract which he made with the party shall not be valid.

¹The offence of champerty, in Norman-French the *champ-parti*—"field-division"—of the common law, seems to be of equal antiquity with the legal profession. It consisted of a corrupt agreement between attorney and client, by the terms of which the property in dispute in an action at law was to be divided between them, if obtained; the former to bear all the expenses of the suit. It was known to the Romans, who imposed upon both parties a penalty of the forfeiture of the third part of their effects; incapacity to hold office; and the disgrace of being considered infamous. (Corp. Jur. Civ. Dig. XLVIII-VII-6).

"*Chompertours*" were considered guilty of conspiracy by the ancient English law. (Staundforde, *Les Plees del Coron*, III-p. 176). The punishment was more severe than that of the civil law. "The Attainted of Champerty shall suffer three years Imprisonment and be Finable at the King's will." (Statute 33, Ed. I). Champerty is now a misdemeanor in England. (Stephen, *Dig. of the Crim. Law*, III-XIV-141).—Ed.

LAW XV.

What Punishment an Advocate Should Receive Who Acts Fraudulently in a Lawsuit.

A prevaricator means, in both Latin and Castilian, one who acts deceitfully towards the person for whom he appears, and especially when he secretly aids and advises the adverse party, and openly seems to assist his own client from whom he receives a fee, or for whom he agrees to make an argument. For which reason we order that an advocate of this kind shall be put to death as a person guilty of treachery, and that out of his property there shall be delivered to the party in the suit against whom he was guilty of deceit enough to make up for all the injury and loss which he suffered while in court.

We also decree that, when an advocate knowingly causes his client to make use of forged documents or false witnesses, he deserves the same penalty. We also decree that an advocate ought to be very careful not to promise his client to gain the suit committed to his hands, for if he afterwards does not gain it as he promised, he should be required to pay the party to the suit an amount equal to all the injury or loss resulting to him therefrom, and, in addition, the expenses which he has incurred by prosecuting the case in court.¹

¹The stringent regulations by which the conduct of the advocate was controlled reveal the solicitude of the Spanish legislation of the XIII century to protect the rights of litigants before the judicial tribunals. Some of them are borrowed from the Roman practice, which, however, as a rule, could boast no such efficient safeguards. Originally the Roman patron transacted the legal business of his clients, and this custom was prevalent in the Peninsula under the Visigothic domination. Advocates, at common law, in ancient times were few and far between; the English practice required every party to a suit to appear in person, when able to do so; and no agent could represent him except after permission had been asked and granted by the court. A reminiscence of this survives in the formality of calling the plaintiff where a nonsuit is entered. The severe penalties to which the betrayer of professional confidence was liable, as set forth in the preceding law, indicate the appreciation of the supreme importance of legal honor and responsibility by the compilers of the *Partidas*.—Ed.

TITLE VII.

Concerning Summonses.

We stated, with sufficient explicitness, in the preceding Title concerning advocates, that they should show and advise plaintiffs and defendants how to prosecute and defend their suits in court. And for the reason that a summons is the root and beginning of every suit which must be decided by judges and argued by advocates because of the controversies arising between plaintiff and defendant; therefore we desire to speak of the summons. We shall first explain what a summons is; who can issue it; in what way this should be done; who can be summoned and who cannot; what penalty he deserves who is obstinate and refuses to obey a summons; and how he should be punished who disposes of the property concerning which he was served with a summons.

LAW I.

What the Word Summons Means, Who Can Issue It, and in What Way This Should Be Done.

A summons means an order given to some one to appear before a judge to answer in court, or comply with his order; and the king, a judge, or the royal doorkeeper by their command, can issue it. The way in which a summons is made is as follows: the king can serve it verbally,¹ or through his doorkeeper or by his letter, and those who have authority to preside in his stead in his court, or in his cities or towns, can also serve a summons verbally, or in writing, or by their known messengers especially appointed for this purpose. Moreover, when one person has a complaint against another, and finds him in the Court of the King, he can ask the justice of the king to summon him, and the latter can do this himself, or by his messenger.

There is still another kind of summons, which is issued against parties who conceal themselves or flee from the country to avoid doing justice to those who complain against them, for persons of this kind can be summoned not only personally, but also in their houses, by serving notice upon the members of their families who are found there. Where they have no houses, proclamation should be made concerning them in three markets, in order that their relatives and friends may defend them in court, if they desire to do so.

When a summons has been served by any of the principal doorkeepers of the king or by his justice, or by any municipal judge, we order that this may be proved by him who served it, and by another witness if it should be denied; but where this was done by one of the inferior doorkeepers, we deem it proper that the service be proved by two witnesses in addition to the said doorkeeper, in order that no fraud may be perpetrated in the matter; but where a verbal summons is given by the king or by the judges of his court, we order that it shall be admitted without further proof.

¹ This is in the *in jus vocatio* of the civil law. Service was made on the party in person, and any one who happened to be present could be subsequently called as a witness to it. If the defendant proved refractory, he could be brought into court by force, a proceeding authorized by the law of the Twelve Tables; "*Quod si vocatus non compareat, vel ad iudicis tribunal sequi nolit; qui eum vocavit, praesentes aliquot ciues ad testimonium dicendum inuitato. Deinde adversarium tergiversanten apprehendito: ut in ius quasi, imaginaria vi captivus ducatur.*" (Leg. XII Tab. I-II). Originally, no private individual was exempt from this process, but, in time, matrons, minors, clients, and all persons legally under the charge of others became so, and service was required to be made on their husbands, parents, patrons, and guardians. By the civil law a woman summoned could not appear by her attorney, as she could by the rule of the *Partidas*.—Ed.

LAW II.

Persons Who Are Summoned Should Appear Before the Judges; and Who Can Be Summoned, and Who Cannot.

Every man summoned by order of a judge should go before him, and appear for himself, or for some other party at the time designated; although he may enjoy some privilege, or some other lawful reason exists why he is not required to do so. This is the case on account of the honor of the position which the judge holds for the king, for, if the party should refuse to appear, it would seem that he did so rather through disdain than for any other reason. But when he appears before the judge, and produces his exemption, or gives any other lawful reason why he ought not to be compelled to answer, it shall be sufficient.

And, although all persons are required to go before a judge when they are summoned, as above stated, nevertheless, there are men who cannot be summoned, and, if they should be, who are not required to answer before him who summoned them; as, for instance, a judge superior or equal in rank to the one who summoned him; or a priest while he is engaged in saying mass or conducting service in the church; or monks, nuns, hermits, or other members of religious order of those under control of a superior, without whose consent they cannot go elsewhere. Whoever desires to obtain justice from such persons as these, should cause their superiors to be summoned, as already stated in the Titles treating of Plaintiffs and Judges. We also decree that those should not be summoned who are required upon a certain day to be present with the king in battle, or with their lords in any business or contest; or such as remain to protect towns, castles, or other fortresses which they hold of the king or of their lords, the times being such that they are apprehensive of danger. We decree that the same rule shall apply to those who are employed in pacifying the country, when they see it agitated by an uprising or a tumult, provided they are men fit for that purpose, or where they remain to defend the country or kingdom of their lord in time of war. Those who are ill with serious disease, or wounded so that they cannot come, or are imprisoned, or persons who are contracting marriage, should not be summoned on the day when this takes place; nor those in whose house anyone has recently died and is soon to be buried; nor those present at the death or the interment of their lord, or of any relative, or of a neighbor, or of an acknowledged friend, until they have returned home from the burial. We also decree that those should not be summoned who are under legal age; or who are deprived of their senses; or who are such spendthrifts of their property that guardians have been appointed for them to care for it; parties, however, who have a complaint against persons of this kind, may cause those who have charge of them and their property, as guardians, to be summoned. We also decree that those despatched on a mission for the king or their lord, or the Council, shall not be summoned; nor shall a crier while he is making proclamation in a town; nor any man or woman who is a slave to another; for none of the latter parties can be summoned, except in special cases, as we have previously stated in the Title concerning Plaintiffs.

Moreover, anyone previously summoned by another judge to appear before him on a certain day, should not be summoned within the time appointed by the first; except where the judge who issued the last summons is of superior rank to the other who caused him to be summoned in the first place, for, in that case, he should obey the summons of the superior judge. And, during the time included in this summons, the judge who issued the first one can institute no further proceedings against the party, for the reason that he summoned him

and he did not appear before him, and if he should proceed against him, or against any of the other persons above mentioned in this law, we order that such an act shall not be valid.

LAW III.

Ladies Who Are Mistresses of Their Own Houses, or Young Ladies, or Other Women Living Honorably at Home, Cannot be Summoned to Appear Personally Before a Judge.

A married lady, widow, or other female, living honorably in her own house, cannot be summoned so as to be required to appear personally before the judges in order to do justice in any case which does not involve the shedding of blood, or some other punishment; for it is amply sufficient if women of this kind send their attorney to court in other actions. The wise men of the ancients considered this proper for the following reasons, namely: because it would not be becoming for persons of this kind to appear and mingle publicly with men, as we have previously stated in the Title concerning Advocates; where, however, the judges desire to interrogate them in order to ascertain the truth, they should go to their houses, or send a notary, to put the question and write down their answers. Moreover, we declare that every man who is summoned while in his own house, in any case not involving crime, is not required to appear personally before the judge, if he does not desire to do so. This is the case because every one should be secure in his home and enjoy repose while there,¹ but he should send his attorney to appear before the judge and answer in his stead. Where, however, any of these persons are summoned in a criminal case, they are bound then to appear personally before the judge, although the summons was served upon them while in their houses.

LAW IV.

Children Cannot Have Their Parents Summoned, Nor Can Emancipated Persons Those Who Enfranchised Them.

It is but natural reason and is just that children should have reverence for and honor their fathers and their mothers, rendering them service for what they constantly obtain of them, and not bringing them into court on account of disputes or actions at law. Wherefore the wise men of the ancients deemed it proper to forbid that either a son or grandson should cause his father, his mother, his grandfather, or his grandmother, to be summoned in order to bring them into court, so long as he is under their control; except for those special reasons which we previously stated in the Title concerning Plaintiffs, and in the other Title which treats of the authority which parents have over their children. However, a son who has been freed from the power of his father, can cause him to be summoned to court with the consent of the judge, for under no other circumstances can he summon his father, his mother, his grandfather, or his grandmother. We also decree that an emancipated slave must not summon the person who enfranchised him, without the consent of the judge, for he should always reverence and honor him who delivered him from slavery, and gave him liberty. This is understood to refer to a master who, of his own free will, liberated his slave, desiring to show him favor and mercy, whether he did, or did not, receive money from the slave himself. But where another person gave money to a master in order that he might emancipate his slave, then the said emancipated slave can summon him who enfranchised him to

¹ "*Domus sua cuique est tutissimum refugium.*"—Ed.

court, without asking permission of the judge, and he is not bound to show him that honor and reverence which other emancipated slaves whom we have referred to above are required to do.

LAW V.

What Punishment an Emancipated Slave Deserves, Who, Without the Permission of the Judge, Summons Him Who Enfranchised Him.

An enfranchised slave must pay as a penalty fifty maravedis of gold to him who enfranchised him, when he summons him without permission of the court, except where the former master who was summoned does not appear before the judge at the time appointed in the summons; or where the emancipated slave appears before him, repents, and withdraws the suit in which he had summoned him; or where the party who enfranchised him appears, of his own accord, and answers in court at the appointed time, without accusing the emancipated slave for summoning him without the consent of the judge, as he should not have done; since, for either of these reasons, the liberated slave is exempt from the penalty aforesaid.

LAW VI.

A Woman Should Not Be Summoned Before a Judge Who Wished to Violate Her, or Marry Her Without Her Consent.

Where a judge attempts to marry, without her consent, a woman who is a resident of the country where he has jurisdiction, or wishes in some other way to use force upon her, we declare that a woman like this, or any woman or man of her family who lives with her, from that time forward, shall not be summoned before that judge; and if they are summoned, that they will not be required to come, or send an attorney to answer before him; for it might happen that, for the reason she was unwilling to comply with his wishes, the judge, in causing her to be summoned was prompted by malice, to invent wrongful claims in order to be revenged upon her. However, persons who have a complaint against such a woman or any members of her family, can cause them to be summoned before another judge of that district, if there is any there; and if there should happen to be none, can have them summoned before the *adelantado*, or any superior magistrate of the country, and the latter is bound to summon them and do them justice, or appoint other good men of that locality, who are without suspicion, to hear and determine their cases.

LAW VII.

How the Parties May Extend the Time Between Themselves, After They Are Summoned.

The parties may agree among themselves to extend the time for appearance, which has been fixed for them by order of the judge. And, in such instance, they may do so with the consent of the judge. And, they are required to appear before the judge at the time agreed upon. And, the party who does not come, should be dealt with as one in default, who has not appeared at the time which the judge has fixed. But if they themselves prolong the suit without the consent of the judge, he who does not come, ought not to receive any other penalty except that fixed by themselves; nor can the judge hold against him because of the summons. So, we say the same, when some who were not summoned by order of the judge, agree among themselves to fix the time at

which they will appear before him. For we do not consider it right, on account of the many disputes and quarrels that might arise among men, that one man may summon another or give him notice except in the manner indicated above.

LAW VIII.

What Penalty He Who Is Disobedient in Not Answering a Summons Deserves.

Some men are disobedient so that they refuse to answer a summons served upon them, and these should not remain unpunished, for the reason that they treat with contempt the order of those whom they ought to obey. Wherefore we decree that, when anyone is summoned by the king, either verbally, by his doorkeeper, or by his letter, and is a nobleman or councillor of some locality, or some other eminent personage, such as an archbishop or bishop, a master of some order or commander, or a prior or abbot, where any of the above-named persons neither comes nor sends anyone at the appointed time; or is disobedient and unwilling to appear in the case in which he was summoned; or leaves court without permission of the king, he must pay the latter a hundred maravedis, on account of the contempt he showed to his order. Where he is a nobleman, a knight, or a distinguished man of the town, he must pay thirty maravedis to the king; and if he is a man of inferior rank he must pay ten, and, in addition to all this, each of the persons aforesaid should reimburse his adversary for all the expenses which he has incurred by reason of that summons, because he refused to come and do him justice. Where the party who was disobedient was summoned before a judge belonging to the Court of the King, we order that he must pay five maravedis to the judge before whom he was summoned, on account of the contempt he showed to his order. Whoever denies that he was summoned, if the service is proved, must pay a double penalty to the king, or to him before whom he was summoned, and double the expense to his adversary besides.

All that we have stated concerning persons summoned we command shall be observed against those who summon them, if they do not appear or send, as they should, at the appointed time. We also decree that every man summoned on the complaint of another, for the purpose of doing justice, before a judge with jurisdiction over cities or towns, who does not come at the designated time, or send someone to act for him, or absents himself without the order of the judge, shall pay, as a penalty half a maravedi to the judge, and another half to his adversary. He who causes the summons to be issued shall suffer the same punishment if he does not come, or send his attorney at the appointed time, as he should do.

LAW IX.

What Penalty a Judge Deserves, Who Is Unwilling to Issue a Summons as He Should, or Protracts a Suit at the Request of Anyone.

The wickedness of human beings in this world is so great, and they practise it in so many ways that, if justice and law did not prevent them, good men would not be able to live in peace, or enjoy their rights. For which reason we decree that if a judge, promoted by either wickedness or hatred, should refuse to summon men on the complaint of another, or should extend the time at the request of any persons, or because of any favor or assistance which he wished to bestow upon them, and this can be established by proof; he must pay to the *alcalde* out of his own property, the expenses the plaintiff

incurred as well as damages for any injury he received by reason of his not being willing to issue a summons on his account, or because he unjustly extended the time; and the plaintiff shall be believed under oath concerning said expenses and damages, with the approval of the judge before whom he made complaint.

LAW X.

How Long a Time Persons Who Are Summoned Should Wait for Their Adversaries in the King's Palace, in Addition to the Time Stated in the Summons.

We decree that men who have been summoned to the Court of the King should wait for their adversaries, when some of them come at the appointed day and others do not. We consider that this is just for two reasons. First, in order to be careful that in the Court of the King no one may suffer loss through lapse of time, as he may elsewhere, for this is a place where matters should be conducted with greater concord and better advice, so that they may not easily be set aside, and therefore a longer time is necessary than that appointed for their appearance in the summons. The other reason is to avoid the injury which may result to him who expects to gain an advantage on account of the expiration of the time, and, afterwards, when his adversary appears, and is able to give a lawful reason for not coming, when he thinks to profit by it he will suffer loss; because he will have to begin the case again and incur greater expense, and the pleasure he experienced thinking that he had gained the suit, will be changed into dejection if the other party should happen to prevail. Therefore we consider it proper that all persons summoned to the Court of the King, if they belong to the kingdom where the sovereign exercises authority, or lives, should wait for their adversaries for the term of three days after the time stated in the summons has elapsed, and if they belong to other kingdoms that they wait for them nine days.

LAW XI.

Where a Person Who Was Summoned Offers a Lawful Excuse for Not Coming it Should Be Valid.

Those who are summoned often labor under impediments, so that they are unable either to come or to send anyone before the judge to answer at the time appointed for that purpose. Wherefore we decree that it is just and proper, since they failed to appear because they were not able to do so, that they should not be punished for disobedience. The lawful impediments for which they can be excused are the following; for instance, where a person summoned was prevented by serious illness; or met with obstacles on his journey from swollen rivers or deep snows, or other inclement weather; or where he was interfered with by robbers or public enemies who were in possession of the highways, or who had opposed him and were more powerful than he so that he could not venture to come, except with the risk of death or imprisonment; or where he was prevented by some other cause of this kind, for where he proves this and explains it to the judge, his explanation should be sufficient to exempt him from punishment or damages for not appearing at the appointed time; but where the illness of the party summoned is of long duration, he should send his attorney to act for him. Moreover, when a party summoned is threatened and fears his enemies, who have possession of the highways as above stated, he should send word to the judge who summoned him that, for this reason, he does not dare to appear before

him, and the judge, as soon as he is informed of this, should take such measures that the party can appear in answer to the summons, or safely send someone to do so; and, so long as the judge does not furnish him with such security, he should not act in obedience to the summons.

LAW XII.

A Person Who Has Been Summoned Cannot Avoid Answering Before the Judge Who Issued the Summons, Although He May Subsequently Take Up His Residence Elsewhere.

Where a man is summoned to appear before a judge who has jurisdiction over him, and afterwards leaves the neighborhood to reside in another outside of that jurisdiction, he cannot avoid answering before the judge who summoned him in the first place. We decree that this same rule shall apply to every other person summoned in this manner, who either desired to go to school, or on a pilgrimage, or on a mission of the king or of his council, or to absent himself for any other purpose of this kind; for no one, for any of these reasons can avoid answering by himself or by an attorney before him who summoned him; and if he does not answer, the judge can proceed against him, as he can against a party who is disobedient.

LAW XIII.

What Penalty a Person Deserves Who Alienates the Property Concerning Which Summons Was Served Upon Him.

It happens many times that persons, in order to defraud those by whom they are summoned, maliciously sell or alienate the property in dispute, and when they appear before the judge to do justice to those who claim said property as their own, declare that they are not bound to answer, for the reason that they are not in possession of the property in question. Wherefore We, being desirous of doing away with fraud of this kind, deem it proper, and do order, that any man who, after he has been summoned, disposes of any property concerning which the summons was issued and which is claimed by the plaintiffs, who state and allege that the said party has no right to it and that it is theirs; such a transfer shall not be valid, and the property shall be returned to the possession of him who disposed of it, and he shall be required to do justice with regard to the same. In addition to this, he who purchased it, if he was aware of the fraud, shall lose the price that he paid for it, and, moreover, the vendor shall pay out of his own possessions a sum equal to the value of the said property, on account of the fraud which he committed; and all the amounts thus paid shall belong to the royal treasury. But where the purchaser was not cognizant of the fraud, and bought the property in good faith, he is entitled to recover the price which he paid for it, and the vendor shall pay him in addition, by way of penalty, a sum equal to the third part of what the property was worth, and the other two thirds of the value the vendor shall pay to the king. Where the party summoned has exchanged the property in dispute for some other, and he to whom he gave it in exchange was aware of the fraud, he shall pay the king as much as the property, concerning which the summons was issued, was worth, and he who exchanged it after he was summoned shall pay an equal sum out of his own property; and, in addition to this, the sale should be set aside, and justice rendered with regard to the property in question. We decree that the same rule shall apply where the said property was disposed of as a gift, after the summons was served, but where he who received it in exchange, or as a gift, was not privy to the

fraud, he should suffer no penalty; we decree, however, that the exchange or the gift shall not be valid. We also order that he who maliciously gave away or exchanged the property after he was summoned, must pay to the other party to whom he gave it, or with whom he exchanged it, a sum equal to the third part of its value, and pay the other two-thirds to the royal treasury.

We decree that the above mentioned penalty—to which we have stated that the party summoned is liable on account of the fraud which he committed by disposing of the property in dispute, which liability to punishment affects both him and the party to whom it was transferred—shall be imposed upon the party who applies for the summons, when he fraudulently transfers the property for which he brings suit and claims as his after the summons has been issued, as well as upon him to whom he transferred it, after he caused the summons to be served upon the other party on account of it. For neither the party having the summons issued, nor the one upon whom it is served should, or can be permitted to, act fraudulently in any way with respect to the property concerning which the summons was issued, and which they claim as their own, as above stated until the controversy existing between them has been decided in court, or the party summoned has been discharged.

LAW XIV.

When Property Concerning Which a Summons Is Issued, Can Be Transferred Without Liability to a Penalty.

Property, concerning which a summons is issued, cannot, and should not be transferred, until the controversy involving it has been decided in court, as we have stated above in the preceding law, except in the following specified cases. First, where the property, concerning which the summons is issued, was subsequently given at the time of marriage to another. Second, where the property belongs to several persons and they wish to divide it among themselves and transfer it to one another, for the reason that it is in their possession. However, in either of these cases, he to whom the property is transferred is bound to answer the claim concerning which the summons was issued. Third, when the said property is transferred after the summons is issued, by reason of a bequest made at death. But, in this last instance, the heir of the party who bequeathed said property is required to defend and carry on the suit instituted with regard to it, until it is terminated. If the latter gains it, the property should be delivered to him to whom it was bequeathed, and if he loses the suit through no fault of his, and without any fraud on his part, the heir is not required to pay anything by reason of the bequest. Moreover, we declare that if the party to whom the property was bequeathed and concerning which the summons was issued, should suspect that the heir is not conducting or attending to the suit in a faithful manner, he himself has the right, if he desires to do so, to be made a party with the heir in the case in order to prosecute the claim to the property.

LAW XV.

How a Judge Should Proceed Against a Party Who Fraudulently Transfers Property, Before a Summons Relating to It Is Served Upon Him.

One of the things in the world which kings and other rulers who occupy the place of Our Lord God on earth should most exert themselves to maintain according to justice, is to oppose the malice of mankind, so that the law cannot be interfered with by them. For which reason We, desiring to accomplish this, decree that, where any man suspecting that some one else intended to

have him summoned, on account of property in his possession, transfers it fraudulently, before he is served with the summons, to some other party more powerful than himself; or to some one acknowledging a different sovereignty; or to a very malevolent man; or to one who was more turbulent than he, in order that the other party may have more difficulty in securing his rights, arranging matters so that he would have a more formidable adversary than himself; we order that he who commits a fraud of this kind shall not profit by it, and that it shall be at the option of the party claiming the said property to sue him for it just as if it was in his possession, or to sue the other party to whom it was transferred, and this suit can include also all damages and losses suffered on this account.

LAW XVI.

When He Who Has Any Cause of Action Against Another Surrenders it, or Disposes of it, Either Before or After Summons Has Been Issued, to Some Party More Powerful Than Himself, On Account of Some Office Which He Holds, Such Transfer Will Not Be Valid.

Not only defendants, but plaintiffs as well, seek means by which to commit fraud, as we have stated in the preceding law, and for this reason we must consider how to thwart their wickedness. Wherefore we decree that, where a plaintiff, either before he summons his adversary to court or afterwards, transfers the cause of action which he has against him to some other party more powerful than himself by reason of some office which the latter holds, disposing of said right by sale, exchange, or gift, or alienating it in any other way whatsoever similar to these; we order that a transfer of this kind shall not be valid, and that the defendant shall not be required to answer under such circumstances; and also, that he who made the transfer shall lose whatever rights he may have had against the other party to the suit in which he made said transfer. But where the plaintiff parts with his claim to some other man not more powerful than he, and does this by disposing of all the rights which he possessed in the matter, and made a genuine assignment before he summoned his adversary; we decree that such an assignment shall be valid, for the reason that it appears to have been made without fraud. Where, however, he has already caused his adversary to be summoned on account of the claim which he held against him, and afterwards desires to assign his rights in the suit, he cannot do so, although he may desire to assign them to a party who is not more powerful than himself, excepting in the specified cases which we mentioned in the law of this Title which begins: "Property cannot and should not be transferred."

LAW XVII.

Anyone Who Has a Claim Against Another Can Bequeath it in His Will to a Man More Powerful Than Himself, if He Desires to Do So.

One ought not to suspect that a person who is near death would wrongfully leave anything in a written bequest which might result in the injury of another, or endanger his soul. And, although in the preceding law we stated that no one has power to transfer any cause of action he may have against another party, by selling it, exchanging it, or assigning it in any other similar manner whatsoever, to a man who is more powerful than he by reason of some office which he holds; we decree, however, that a man can do this in his will, or by a bequest, granting the rights which he has against another to anyone, even though he may be more powerful than himself. After he who made the

will or bequest is dead, the other party can bring suit in court for the claim due to him, just as he who made the will could do, if he were living, except where the testator had already instituted proceedings in court, by means of a summons or in some other way, with regard to the claim which he bequeathed to the other party at his death; for, in this case, the heir of the deceased should prosecute the suit for the claim which was bequeathed to the other party until final judgment has been rendered concerning it; and whatever property or benefit is derived from the same should be afterwards transferred to said powerful person, according to the term in which it was bequeathed by him who made the will.

TITLE VIII.

Concerning Possession of Property Given by a Judge.

It is proper, since we spoke in the preceding Title concerning summonses, that we speak in this of possession of the property of defendants ordered to be given by judges, for the reason that they did not appear before them at the time designated by the summons. Wherefore we desire to show what possession of this kind is; by whose order, against whom, and in what way it should be granted; what proceedings should be taken against those who interpose obstacles and are unwilling to consent that it shall be given; and what rights the plaintiff acquires in the property of which he is ordered to be placed in possession, although he is not permitted to have control over it. Moreover, what penalty should be inflicted upon him who uses violence for this purpose, and within what time the defendant can recover the property of which the plaintiff was given possession, and also how a judge should proceed against a party who was summoned with regard to some offence which he has committed, and who refuses to appear at the appointed time.

LAW I.

What Possession of This Kind Is, and by Whose Order, and Against Whom It Ought to Be Given.

Possession granted by a judge is the placing of a man in control, and securing him the enjoyment of any property belonging to the party summoned; and the judge can grant this, in default of an answer, when the parties summoned are unwilling to appear before him; or where they are disobedient, and refuse to answer when they do appeal; or where they maliciously conceal themselves, not desiring to render justice.

LAW II.

In What Way Possession by Order of Court Should Be Given.

The way in which possession in court should be given is the following, to-wit; in the first place, the judge should render his decision speaking, thus: "For the reason that So-and-So was disobedient, and refused to appear at the proper time and do justice to So-and-So, his adversary; I direct, and order that the plaintiff, in default of answer, shall be placed in possession of the property which he claims as his, or in which he alleges that he has some right." If the said property cannot be found, he should state that he orders him to be put in possession of as much property belonging to the defendant as will be equal in value to that particular article concerning which he is unwilling to do justice. But where it happens that the claim, with regard to which the defendant refuses to render justice, consists of a debt, or of something else which the defendant is bound to pay or to do; then the judge should say that through failure to answer, he orders to be delivered to the plaintiff as many of the chattels of the defendant as are equal to the amount of the debt for which he sued him, or which are equal in value to the labor which he was obliged to perform. This delivery should be made first out of the movable property of the disobedient party, if there is enough of it for this to be done, and, if there is not, it should be made out of the immovables, to an amount equal to the debt,

as above stated. An order of this kind is called in Latin, *sententia interlocutoria*, which means a decision rendered in a case which is not determined by final judgment; but before the judge causes delivery to be made for any of the reasons aforesaid, he should require the plaintiff to give some security, by which he binds himself to summon the defendant and prosecute his claim against him; or, at least, he should compel him to make oath that the summons which he causes to be issued, and the claim which he makes, are not prompted by malice, but because he believes that he can justly do these things.

We also decree that where the person ordering such delivery to be made, is the king, he should command his *alguazil*, or his doorkeeper, to make it. Where a judge of his court issues such an order, the delivery should be made by some of the king's doorkeepers, and if municipal judges issue it, they can execute it themselves, or officials especially appointed for this purpose can do so by their order. And, above all, judges should protect parties thus placed in possession, so that they may not suffer either violence or wrong.

LAW III.

How a Judge Ought to Proceed Against a Party Who Interferes With Possession Granted by the Court, or Does Not Consent That It Be Given.

The king having ordered a party to be placed in possession of the property which he claims, or of that of his adversary, in any of the ways stated in the preceding law, and he who holds the property in question, concerning which the order is made, does not consent that it be executed, the king should direct the judge or magistrate of that district, or any other man he wishes, to deprive him of its possession. If he resists he must pay a hundred maravedis to the king, and five to him who acted by his orders, and reimburse his adversary for the expense he incurred by reason of this proceeding. But where possession is obtained by order of another judge, the latter should send word to the one who has jurisdiction in that district, to dispossess the party who was defending the property, and put the plaintiff in possession of what the court ordered him to have. And if the said party should resist this, we order that he shall pay the king ten maravedis, and the judge an equal sum, and his adversary his expenses, as above stated.

We decree that this same penalty shall be inflicted upon any other person whomsoever, who interferes in a matter of this kind and is not the owner of the property of which possession is ordered to be given, who does not give a lawful reason for his resistance. But where anyone manifests opposition, declaring that the property in question is his own, or that he has some right in it, and establishes this fact by witnesses or by documentary evidence, we decree that possession of said property shall not be given, even though suit may have been especially brought to recover it. But where suit has been brought on account of a debt, or by reason of something which the party was required to do; some other unencumbered property belonging to said defendant should be searched for of which to give possession. But where he who says the property in question is his, or that he has some right in it, is unable to prove this, as above stated, he is liable to the penalty which we previously mentioned should be imposed upon any one who places obstacles in the way of giving possession of property. We order this to be done, since it appears that he acted rather through malice in preventing the other party from obtaining possession of the said property, than on account of any rights he had in it.

LAW IV.**What Rights a Plaintiff Acquires in Property, of Which He Is Ordered to Be Placed in Possession, Although His Claim Is Disputed.**

A plaintiff should acquire some rights in property, where an order has been issued to place him in possession of the same, although this may not have been done, it having been prevented for some of the reasons we stated above. Wherefore we decree that, if the king or any other judge should, in default of an answer, order anyone to be placed in possession of the property claimed, or of any other belonging to his adversary; and the party who holds the property which was the subject of the order of the judge, defends it by force, or appeals, so that possession can not be given; and a year elapses, and the plaintiff claims that the property in dispute is his, or that he has some particular right in it; or if four months should elapse, and the claim should be in the nature of a debt, or of something which should be given to him, or done for him, so that the defendant, within this period, did not appear for the purpose of doing justice to his adversary, as he should do; we order that the plaintiff shall be entitled to possession of the said property, just as if he had obtained it by order of court, without any hindrance, and besides that he who manifested opposition shall suffer the penalty which we mentioned above.

LAW V.**What Penalty Should Be Inflicted Upon Him Who, by Force, Deprives Anyone of Property Which He Has Been Placed in Possession of by an Order of Court.**

We consider that those persons are guilty of great insolence who employ force against their adversaries, or against any other persons whomsoever, with regard to property of which they have obtained possession by order of the king, or of any other judges. Wherefore we decree that, where a person has, by an order of court, been placed in possession of property which he especially brought suit for, or of the property of his adversary in default of an answer, and the other party deprives him of it, or takes it from him by violence after this, without the order of the judge who placed him in possession, or that of some other magistrate superior to him in rank; the party guilty of violence be required to surrender to him the property which he took, or wrested from him by force, and damages for all injury and loss which he will swear he suffered on this account; and, in addition to this, on account of the insolence of which he was guilty, we order that he pay to the royal treasury by way of penalty, whatever sum the judge deems proper; the latter first taking into consideration who the party is against whom violence was employed, the nature of the property taken from him by force, and the manner in, and the time at which this was done, for if the judge carefully considers all these matters he can very readily ascertain what penalty the party guilty of violence deserves.

LAW VI.**For How Long a Time a Plaintiff Can Hold the Property of Which He Was Placed in Possession, and Its Income, and How It Should Be Disposed of at Auction.**

After a plaintiff, through default of an answer, has been placed in possession of property which he claims as his own, or alleges that he has some particular right in, and the defendant appears before the judge within a year from the day on which possession was given, and gives a surety that he will

appear in court; and pay the costs the judge has taxed and the other party has sworn have been made in the case; he is entitled to recover the property of which he was deprived on account of his disobedience, together with all the rents and profits which the plaintiff has collected from it during this time, with the exception of the expenses incurred by reason of the fruits, or in the improvement of the property. But after a year has elapsed he cannot do this, because, after that time, the plaintiff becomes the true holder of the property of which he was placed in possession, and for that reason is entitled to the rents and profits derived from it. The defendant, however, still retains all his rights to claim the ownership of said property, if he desires to do so, even though a year may have elapsed.

But where possession of property belonging to a defendant is given on account of a debt, or because of something he was obliged to give, or some act he had to perform for him who caused him to be summoned; then if the said defendant appears before the judge, within four months after the day when the possession was given, and give security to appear in court, and, without delay, pays to the plaintiff the costs incurred in the case, which have been taxed and sworn to, as we have above stated; the property taken from him by the order of court should be returned to him along with the rents and profits collected by his adversary during the period aforesaid. But we decree that, after the term of four months, the plaintiff acquires a right to the rents and profits of said property, and the lawful possession of the same; and, in addition to this, he can petition the judge to put up at auction the property of which he was placed in possession. The judge should do this by ordering the said property to be proclaimed for the space of thirty days, and by personally notifying the party to whom it belongs, or by leaving notice at his house if he cannot be found.

And, after the property has been sold in this way, the plaintiff should take as much of the price as will equal the sum which he should have, not only in satisfaction of the principal debt but also on account of the costs and expenses which he has incurred in the case, and if anything remains, he should deliver it to the defendant. Where no one can be found who wishes to buy said property, the judge should then cause it to be appraised according to the judgment of reliable men, and deliver as much of it in payment of the plaintiff, and to be his own, as the sum to which he is entitled amounts to, and also the costs and expenses which he has incurred in these proceedings. If, however, the defendant should appear before the judge before his property is sold or given in payment, as above stated, and desire to pay the costs to his adversary, and give security to appear in court, this will be sufficient; and the property ought not to be disposed of, even though the four months have elapsed as aforesaid. The defendant will then be entitled to recover the property, and should afterwards proceed with the suit in which he was summoned.

LAW VII.

How a Judge Should Proceed Against Anyone Who Was Summoned on Account of Some Offence Which He Had Committed, and Who Is Unwilling to Appear at the Designated Time.

Men sometimes commit offences concerning which it is necessary to summon them and bring accusations against them; and they, apprehensive of the punishment which they deserve, refuse, and are unwilling to appear before the judge, and submit to the law. In a case of this kind, we decree that the judge can proceed against the rebellious party in the following manner, namely: by causing proclamation to be made in the neighborhood

where the party summoned lives—and if his residence is not known, this should be done where he committed the offence—so that all may know that So-and-So was summoned to appear before the judge, for an offence which he is alleged to have committed and refused to come, and that, for this reason, the judge orders him to be summoned a second time, to appear personally before him, within thirty days, to answer to the law in the matter of which he is accused, and that if he does not appear within that time all his property will be seized. When the crier has made proclamation in this way, he should appear before the judge, and cause to be recorded in his presence, in the book containing the proceedings of the court, in what way he made the proclamation by his order.

If the party summoned does not appear within the aforesaid time, the judge should order a list to be made of all his property, and take such precautions with regard to it that it cannot be wasted or disposed of; and should order the party to be summoned three times, by making proclamation each time in the same way, and by appointing three periods of thirty days each. And if, for the space of one year, from the day upon which these three last periods of time were appointed and proclaimed, the party should not appear personally before the judge to answer to the law, or should not send any lawful excuse for not coming; from that time afterwards, his property should be seized, as is done in proceedings to obtain possession by order of court, but in this case all should be forfeited to the royal treasury, subject to any right which his wife, or any other person whosoever, may have in said property.

If he should happen to come before these three last terms have expired, and give sureties to appear in court in the matter with regard to which he was summoned, he should be heard, and recover his property; but on account of the disobedience of which he was guilty the judge can order him to pay the amount mentioned in the Title concerning Summonses, which those are required to pay who do not appear when they are summoned; and this is understood to apply where he does not offer any lawful excuse for not coming; and if he who was summoned or proclaimed, as above stated, should die before the above-mentioned term has expired, then his property must be returned to his heirs, and they ought not to be required to pay any penalty for the deceased, on account of his disobedience. This is the case because death does away with the offences which the deceased committed during his lifetime, as well as the punishment to which he was liable on account of them; except where the offence is treason or perfidy, or some other of those delinquencies of which a man can be accused and his reputation injured although he may be dead, as stated in the laws of this our book which treat of crimes. Where, however, the party is living, and the aforesaid term of a year has elapsed, and he afterwards appears before the judge and desires to answer to the law concerning the offence of which he was accused and proclaimed, he should be heard; and if he should offer evidence, or lawful excuses which may be of assistance to him, and the other party should not prove against him that he committed the act of which he was accused, he should then be discharged. He cannot, however, subsequently recover the property of which he was deprived on account of his disobedience, except where the king, having pity on him, desires to show him favor and mercy.

LAW VIII.**What Should Be Done With the Profits Yielded by the Property Which the Judge Orders to Be Placed in the Possession of Anyone, for Any of the Reasons Stated in the Preceding Law.**

Where anyone, by order of a judge, has been placed in possession of the property of his adversary, in default of an answer, for any of the reasons which we stated in preceding laws; we decree that a statement of the rents and profits arising from the property which was delivered, shall be reduced to writing before the above-named terms have expired, and preserved so as not to be lost, disposed of, or wasted, so that if his said adversary should appear in court he can recover them, as he ought to do. And if the fruits which are obtained from property of this kind are of such a nature, or gathered at such a time, that it is evident that they cannot be well taken care of, they should be sold, after notice given to the party to whom the property belongs, if he is in the neighborhood, and if not, with the consent of the judge, and the price received for said fruits should be kept until the said terms have expired.

TITLE IX.

When Property in Dispute Should Be Placed in the Hands of Some Trustworthy Person.

It happens very frequently that, after plaintiffs have caused defendants to be summoned, and before they present their claims to them, they ask the court that the property which they wish to bring suit for, be placed in the hands of trustworthy men, because they suspect that those who have it in their possession may waste, conceal, or transfer it, so that it cannot be produced, and that the others to whom they wish to present their claims declare that they should not do this, and the parties very often quarrel on this point. Wherefore We, through the desire we have to do away with the disputes which may arise from this source, desire to show in this Title, for what reasons property in dispute should be placed in the hands of a trustworthy person; what kind of men such persons who have to hold said property should be; and for what length of time they should hold the property entrusted to them.

LAW I.

For How Many Reasons Property Held by a Party Can Be Placed in the Hands of a Trustworthy Person, and What Kind of Men Such Trustworthy Persons Should Be.

There are six special reasons, and no more, why property in dispute between a plaintiff and defendant should be placed in trust, which is called, in Latin, *sequestratio*.¹ First, by agreement of both parties, and therefore he in whose hands the property is placed in trust should take care of it, and surrender it in the way in which he was directed to do. Second, when the property in question is a chattel, and the defendant is a suspected person, and it is feared that he may transfer it, damage it, or waste it. Third, when there has been a contest over some property in court and a final judgment has been rendered against the party in possession, and he takes an appeal; for he should be at once deprived of control over the property if he is a man who may be suspected of wasting and destroying the rents and profits derived from the same. In a case of this kind the judge should place the said property in the hands of a trustworthy person, to take care of it and collect the rents and profits, until the judge to whom the case has been appealed has decided it, and directed to whom the property, along with its rents and profits, shall be delivered. Fourth, when the husband of some woman is destitute of prudence, and wastes his property, so that he begins to become poor, for then his wife can petition the judge to remove her dowry and the property which belongs to her from the control of her husband, and put them into the hands of some trustworthy person, to take care of for her, and to give the rents and profits obtained from that property to him or to her for their support, and the judge should do so.

¹ The *sequestratio* of the Roman Law, with which the proceeding of the *Partidas* corresponds in all essential particulars, was a kind of bailment to insure the safety of property in dispute until the termination of the action brought to determine its ownership. A *sequestrator* could be agreed upon by the parties—a course not authorized by the *Partidas*—or appointed by the magistrate. In some respects it resembled the attachment and replevin of the English and American law, where it was instituted to prevent the destruction, waste, or loss of the property in question, or where the defendant could recover possession of it on entering into an obligation to produce it in court if the suit went against him.

Sequestration of the person of the woman was directed by the Canon Law in the case of a disputed marriage: "*Mandamus, quatenus puellam, de cuius matrimonio quaestio ventilatur in domo, in qua nihil eam timere oporteat, factas honeste teneri, donec praedicta causa terminata fuerit.*" (Corp. Jur. Can. De Spons & Matr. IV-1-14.)—Ed.

Fifth, when some man or woman who has two children, does not remember one of them, or make mention of it at their death, but leaves all his or her property to the other, making it their heir to everything; or if they do remember it disinherit it unjustly. A child of this kind can demand of its brother its share of the property of his father or mother, desiring to divide with its brother all the profits which the latter obtained from the property of his father or mother. Where the deceased was a woman, the said child can also demand in partition the dowry given her at her marriage, or that his brother deduct it from his share of the property which he wishes to inherit, and give him sureties that he will well and faithfully divide all the property, and not be guilty of any fraud in relation to it; and having done this, he should agree with his brother upon a partition of said property, and all his share of same which he is entitled to by inheritance should be placed in the hands of a trustworthy person to take care of, and collect the income from it, and a time should be appointed by the judge within which he must do all these things. If he should do them all within that time, the judge should order him to give and deliver his entire share with the income derived from it, and if he does not do this, he should order him to return the whole to his other brother who was made heir of the said property. Sixth, a slave, institutes proceedings in court against the party having control of him, and a decision is rendered in his favor declaring that he was free; and, after this, a dispute arises between the parties concerning the possession of the property of him who was held as a slave; and he who had been his master claims that the property was his, and that he had given it to him, as to a man whom he held as his slave; and the other denies this, and declares that the property was his own, and that he himself obtained it elsewhere. In a case of this kind we decree that the said property must be placed in the hands of a trustworthy person until it can be positively ascertained to whom it should belong. We also decree that the parties in whose hands judges order property to be placed in trust should be good, loyal, and thrifty men of the country, so that they may not be liable to suspicion of transferring, wasting, or committing any fraud in regard to said property.

LAW II.

How Long a Man Should Hold Property Given Him in Trust.

Trustees should keep property in dispute in their possession as long as the judges who commit it to their charge deem proper, or for the time the parties agreed upon when they placed the property in trust. A stated period agreed upon in this way brings no advantage, and causes no injury to either to enable him to gain or lose by limitation; except where it is especially consented to and conceded by both parties, when the property is placed in the hands of a trustee, that a term fixed in this manner can be taken advantage of by one of them; for in that case the time which has elapsed will result to the benefit of one of the said parties, according to the contract or agreement which they have entered into with one another.

TITLE X.

How Actions at Law Should Be Begun, by Complaint and Answer.

Defendants are sometimes obedient, and appear before the judge who summoned them to answer the claims of those who caused them to be summoned. And since we have spoken above of summons, and delivery made of the property of disobedient persons who are unwilling to appear before the judges who summoned them, to answer those who have claims against them and come into court, we desire now to explain in what way, and by what words actions should be begun by complaint and answer between those who are obedient and appear before the judges. We shall show in the first place what questions one of the parties can ask the other in court, before the suit is begun by complaint and answer; also how, and by what words the suit should be begun; what claims should have preference when there are many together, and what claims should not be considered; and, above all, we shall show what force a suit has, after it has been begun in court by complaint and answer.

LAW I.

Concerning the Questions Which Can Be Put to the Plaintiff and the Defendant, Before the Suit Is Begun by Complaint and Answer.

There are certain questions which a plaintiff can ask concerning the property to which he desires to assert his claim, before an action at law is begun, and these are of such a character that, if the plaintiff does not ask them at that time, and also if the defendant does not answer them, they cannot afterwards conduct the suit with any certainty. This is the case when one party institutes proceedings against another, as, for instance, against the heir of a person who is dead, desiring to collect something which the latter owed him; for, in the first place, he should ask the defendant if he is heir to the property of the deceased against whom the claim is presented, and, if he answers that he is, he should ask another question, namely: whether he is the heir of all the said property or of a certain portion of it, and, above all, he should ask him how he inherits said property. The other is required to answer that he inherits it because the deceased left it to him or to his slave by his will, on account of relationship; for in no other way can a plaintiff prosecute his claim in security against an heir.

We also decree that a plaintiff should answer the defendant positively, when he desires to prosecute his claim acting in the capacity of heir of another party, whether he does so claiming the entire inheritance or only a portion of it, or some debt due to the deceased. Moreover, we decree that when a servant or animal belonging to another injures property, before damages are claimed for the injury, the party desiring to set up a defence for the said slave or animal, must be asked if it belongs to him, or is under his control; for if it is not under his control he will not be bound to make reparation for any damages caused by it, except where he had removed it fraudulently.

We decree that the same rule shall apply where any one is apprehensive of injury which may happen him from the house of a neighbor, which is about to fall down, and brings the matter before a judge, asking him to compel him to demolish the said house, or give him security for any damages which may be caused by the building if it should fall. Before this demand is made he should ask the defendant whether, or not, he is the possessor of the house, or

if it absolutely belongs to him, or whether he has any interest in it. We also decree that if the son, or the slave of any person should contract a debt in the way of trade, or by reason of any shop which he keeps for the sake of profit by selling or buying goods, and any claim, growing out of said shop, is attempted to be collected from a father or master on account of the said son or slave, the master shall be first asked whether he is the possessor of the stock or goods which the said son or slave was accustomed to handle in the management of said business, and if he answer that he is, the party can then prosecute his claim in safety against him. Moreover the defendant should be asked before the principal claim is presented to him, whether he is of lawful age, so as to be able to appear in court. If he replies that he is, the party can then proceed with his suit, and if he says that he is not of age, the plaintiff has no right to prosecute the claim unless the guardian is present; but a question of this kind should not be asked except when doubt arises as to the age of the defendant.

Moreover we also decree that, whenever any person desires to present a claim for property to another, alleging that it is his, he should ask the defendant before suit is brought, whether, or not, he has the said property in his possession, and if he says that he is the possessor of it in whole or in part, this answer will be sufficient; for he has no reason to state by what right he holds it, as we have explained previously in the Title concerning Defendants. In addition to all this, we decree that a judge can put other questions to the plaintiff and the defendant in a suit, at any time until its termination, where he sees and thinks that he has some just reason for doing so, and especially when he believes that by means of such questions he can the more readily ascertain the truth in the case.

LAW II.

When a Defendant Can Repent of Having Made an Answer to a Question Asked Him Before Issue Is Joined.

Certain questions can be put to the parties in court before the principal suit is begun by complaint and answer, as we stated in the preceding law. And for the reason that the parties sometimes repent of the answers they have made, we desire to state here when they can do this. We, therefore, decree that, where a plaintiff or a defendant admits in court any of the matters which we have mentioned above, and afterwards repents of having done so before the principal suit has been begun by complaint and answer, he can withdraw his reply if he desires, as we showed in the Title concerning Defendants, in the laws treating of this subject. But if either of the parties answers any question put to him, after the suit has been commenced, he cannot subsequently withdraw his answer, except where he alleges that he has done so by mistake, in the same way as is mentioned in the Title concerning Questions and Confessions that either of the parties does after the suit has been begun by complaint and answer.

LAW III.

How Suits Should Be Begun by Complaint and Answer.

The very commencement and foundation of every lawsuit in which judgment should be rendered is when the parties come into it by complaint and answer before a judge. This should be done in the following way to-wit: by the plaintiff stating his claim either orally, or in writing, as we explained above in the law treating of Plaintiffs and Defendants, and by the defendant

answering said claim positively and categorically. Where, however, the defendant answers in the name of another, as, for instance, as an attorney, or if he is asked by what right he is the heir of another party, it will be sufficient for the institution of the suit if he replies to the question by saying that he does not know what is asked him, and does not believe it is as stated. Where the plaintiff puts many questions to him either in writing, or orally, the defendant should answer each one of them positively and separately, except where he intends to assent to, or deny them altogether. Moreover, the defendant can answer in the following manner, if he wishes to deny the claim, speaking as follows; "I deny that the matters contained in the complaint of my opponent, are as he states them to be and, for this reason I declare that I am unwilling to do what he demands." In whichever of the ways above mentioned the defendant may answer the claim presented to him, this will be sufficient to begin the suit by complaint and answer, called, in Latin, *contestatio*.¹

LAW IV.

When Many Claims Are Presented Together Before a Judge Which Ones Should Be Heard First.

It happens sometimes that a plaintiff desires to present his claim to the party whom he caused to be summoned before the judge, and his adversary says that he wishes to present a claim and should present his first. Wherefore we desire to show here, when this happens, which demand should be heard; and we decree that if both opponents present two claims, or more, against one another, which said claims are on account of debts, contracts, the redress of wrongs or injuries which have been committed, or relate to any other property whether personal or real, where either sentence of death or corporal injury is not involved, the judge should hear both and decide them together; so that the claim of the party who first had summons issued may precede the other and be previously determined, although the claim of him who was first summoned may be greater. But where the claim made by one party against another relates to an accusation in which a corporal penalty of the loss of property may be involved, the greater claim should be heard and decided before the smaller one is begun to be heard; except where he who asserts the minor claim accuses the other party of some offense or wrong committed against him or his family; for, in that case, accusations of this kind should be heard and decided together. On this subject we speak more fully in the Title concerning Accusations, in the Seventh Partida of this our book.

LAW V.

In What Cases the Claim of the Defendant Should Be Decided Before That of the Plaintiff.

It happens frequently that a party presents a claim against his adversary with regard to something which he says he owes him, or concerning some other matter, and the defendant alleges and says that he is not bound to answer

¹ The forms of the pleadings of both the Roman and Spanish legal systems were remarkably simple, and absolutely free from the voluminous and intricate technicalities which characterized the procedure in actions at common law.

The vital point of the *litis contestatio* hinged upon the question of the existence of a contract. Where issue had not been joined by means of it, the suit abated by the death of either of the parties; otherwise the right to prosecute or defend it, as in the *Partidas*, passed to the legal representatives of the deceased. The *litis contestatio* was, therefore, a preliminary proceeding for the purpose of clearly defining the issue, and was followed by the pleadings, which were either oral or written, whereupon the case immediately went to trial. This summary method of administering justice was greatly enlarged and modified by the practice of succeeding ages, although the civil law never countenanced such obscure and often absurd terms and fictions as those of special pleading, which made the latter in England such an abstruse and intricate science.—Ed.

because he is his slave, or the slave of some one else, and that the claim which is made is not of such a character that a slave can prosecute it in court. In a dispute of this kind, or in any other similar to it, we decree that a judge should, in the first place, ascertain whether the party is a slave, or free. If he finds that he is free, he should hear and determine the claim of the other party who caused him to be summoned; and if he learns that he is a slave, the latter has no right to proceed further with the suit in which the claim is made.

We also decree that, where any person brings an action for landed property, or anything else against another in court, and the defendant alleges, by way of defense, that he should not answer the complaint of the plaintiff, for the reason that he has plundered him, or deprived him of some of his property by force; the claim of the party plundered, or of him who suffered the violence on account of which the summons was issued should be first heard. If it is found that the defendant has been plundered in this manner, or subjected to violence, as he alleges, all that he was robbed of, or deprived of by force should be restored to him, and afterwards he should answer the complaint. But where the defendant does not allege by way of defense, but by way of recrimination, as a cause of action that he was subjected to violence or plundered, then the judge should hear and determine both complaints at once; that is, that of the plaintiff and that of the defendant, so that the suit of the party who first had the summons issued may take precedence, and be the first decided. This is understood to be the case when the complaint of the plaintiff or that of the defendant, which they make against one another, is filed by reason of either having suffered violence or spoliation. But where the party who caused the defendant to be summoned makes a complaint against him concerning any property which he says is his, or in which he had some right, or with regard to something else which the party summoned was bound to give to him, or to do for him; and the party summoned then desires to make another complaint, alleging that the other used violence against him, or plundered him of something; the case of the party who has been subjected to violence should be heard and decided before that of the other. This is just because violence springs from great covetousness or inordinate pride, and, for this reason, judges should preferably pay attention to this, assisting by means of justice the party subjected to it and, afterwards, they should cause him to answer the complaint concerning which he was summoned.

LAW VI.

Where Two Men Make a Complaint Together, Which Should Be Heard First.

It may happen that two men complain of a third party concerning one thing, or more. Wherefore we decree that, if the complaints of the two against the third relate to the same matter, the defendant shall be required to answer the complaint of him who first caused him to be summoned, and afterwards that of the other. If, however, the first one succeeds, he is not bound to deliver him the property with regard to which he was victorious, if he does not previously give the said defendant security to protect him from the other party claiming the property in question. But where both, at once, complain of the third party, then the judge can select one of them, whom he thinks has the better right to prosecute such a claim, and he can bring his suit first and the other afterwards. Where, however, the claim relates to a debt, or a contract which the defendant had entered into with both at different times, we decree that he should first answer him with whom the debt or contract was first made.

LAW VII.**What Claims Should Be Sufficient.**

A party can present several claims against his adversary, by stating and proving them all together, except where one is contradictory to another, for where they are of this description, he cannot do so. This would be the case when a slave sends a person to buy a house, a vineyard, or any other property, with money stolen from his master, and he who makes the purchase for the slave receives the money, knowing that he has stolen it. In this instance the master will have two causes of action which are opposed to one another; for he can bring suit for the money against the party who received it from his slave, as he could do in a case of theft, and, while making this complaint, he will show that he is not pleased with the purchase which the other party made by order of his slave. The other cause of action arises when the master is pleased with the purchase made with his money by order of the slave, and, confirming the transaction, he can bring suit for the said property against him who made the purchase. This claim is opposed to the first one because, when he makes it, he shows that he is contented with the purchase made by the direction of his slave, for which reason, if the said master desires to prosecute these two claims, which are opposed to one another, together, by claiming his money as having been stolen, and also the property purchased with it by the order of his slave, he cannot do so. He can, however, select either of them that he may prefer, considering from which one he will derive the greater benefit, and, having selected one, he cannot afterwards return to the other. We also decree that, if anyone purchases the property of another, without the consent of its owner, he to whom it belongs can bring suit for it where it was not paid for at the time of the sale, or, if he desires to confirm the sale, he can demand the price that was promised for it, but he cannot claim the property and the price together, for the reason that one is opposed to the other, as we previously stated. We also decree that this shall be observed, in the case of all other claims originating in this way.

Moreover, where a party makes a demand upon another for a house, a vineyard, or any other real property whatsoever, alleging that it is his, and the other party who is in possession of it disputes his claim, and, before it is decided, he presents another, demanding that he give him a right of way through another piece of property, which he holds along with the former and which belongs to the said defendant, in order that he may be able to obtain that which he demanded in the first place; he cannot prosecute a claim of this kind, if the property concerning which he makes it should not first have been decided to be his; because no one can claim a right of way through property belonging to another unless by showing that the property, for which he claims the right of way, is his own, or that he has some rights in it.

We also decree that, where one person makes a demand upon another to partition a tract of land, or any other property whatsoever, to which they have a common right by inheritance or partnership, or for some other reason; and he upon whom this demand is made has complete possession of said property, and denies that the other party is his associate or partner or has any right to share in it, he should not prosecute a claim of this kind, unless the plaintiff can prove, in the first place, why he has a right to ask a share of the property with respect to which the claim is made, and, this having been proved, he should be heard concerning the demand he makes for partition. But where the plaintiff is in possession of the property which he petitions to be divided, even though the defendant denies that he is his partner, the other party has no right to demand a share of said property, still a claim of

this kind can be entertained. He should, however, prove and establish the right which he alleges he has in said property, and, when he has done so, the judge should order the property which he brought suit for in partition, to be divided. But where he cannot establish the right which he alleges that he has, the property shall belong to the defendant, and the plaintiff shall be deprived of control over it.

LAW VIII.

What Force an Action at Law Has After It Has Been Begun by Complaint and Answer in Court.

A suit which has been begun by complaint and answer is advantageous in many respects, for the judge can, at once, take the oaths of both parties to proceed faithfully with the case, and this is the way to ascertain more readily the truth of the matter in dispute. Moreover, witnesses can be produced, which could not have been done if the suit had not been commenced in this manner; except in special cases, as is explained in the laws treating of witnesses. Final judgment can also be rendered concerning the claim, which could not be done if the suit had not been begun in this way; and, moreover, the question of the lapse of time, by means of which the property which is the subject of dispute might be gained or lost, is annulled and disposed of. If, however, a petition or claim should be made to the king concerning property of such a description that it might be lost in a year, a day, or even a shorter time, and afterwards the king gives his letter by way of answer; under these circumstances this kind of a claim has such force that the property cannot afterwards be lost through the expiration of the term aforesaid, just as if a suit relating to this same property had been begun before a judge.

We also decree that, after a suit has been begun by complaint and by answer before a judge, neither of the parties can challenge said judge because he considers him to be a suspected person, nor can he do so for any other reason, except where the suspicion or the cause arises again, and is of such a character that it should be considered. We also decree that, after a suit has been begun by complaint and answer, and the party who began it is the guardian of a minor, or the attorney of another person, he can appoint another attorney in his stead in that suit, although authority was not granted to him by his principal to do so; which he could not do before the suit had commenced in this way, as we have previously shown in the Title relating to Attorneys.

TITLE XI.

Concerning the Oaths Which Parties Take in Actions at Law After They Have Been Begun by Complaint and Answer.

We treated sufficiently in detail, in the preceding Titles, of summonses, and other matters which grow out of them, and also of actions at law, and how they should be begun by complaint and answer. We wish now to speak here of the oaths which parties should take in court, in order that suits, after they have been begun by complaint and answer, may be the more readily determined.

In the first place, we shall explain what an oath is; how many kinds there are; who can administer it, or who can take it; with regard to what matters it can be administered and taken; where this can be done; what benefit arises from an oath; and above all we shall state who should make oath in case of an accusation of a crime; what punishment he deserves who swears falsely; and in what way a man can avoid committing perjury, although he may not keep the oath which he has taken.

LAW I.

What an Oath Is, and Concerning What It Should Be Taken.

An oath is a verification made in the name of God, or of something else holy, in which a party declares that something is true, or denies it. We can also state, in another way, that an oath is an affirmation of the truth, and it was invented because matters which men are unwilling to believe, for the reason that they cannot be proved, are given more vigor, and are rendered more credible by it. When we say that an oath should be made by something holy, this is not understood to be by heaven or by earth, or by any creature living or dead; but, first of all, by God, and also by Holy Mary His mother, or by some of the other saints, and this is done on account of the holiness which they receive from God; or by the Gospels in which are related the speeches and acts of God; or by the cross on which he was placed; or by the altar, because it is consecrated and the body of Our Lord Jesus Christ is consecrated upon it; and also by the Church, for the reason that God is praised and adored there.

LAW II.

How Many Kinds of Oaths There Are, and How an Oath Should Be Taken.

Oaths are divided into three kinds, for an oath is either voluntary, compulsory, or judicial. A voluntary oath is that which one adversary makes to another outside of court, having been requested to swear that the matter in controversy is as he states it to be, and that he will discharge his obligation or abandon the suit. It is called a voluntary oath because it is given or taken with the consent of the parties. He to whom it is offered is not bound to accept it, if he does not so desire; and the party with whom he agreed in the first place is not obliged to do likewise, if his adversary asks him to be sworn; nor is the former party required to accept his oath if he does not wish to do so. An oath of this kind, when it is made in the manner agreed upon, should determine the lawsuit, just as if it had been made in court.

A compulsory oath is one which a judge administers by virtue of his office to either party in court. It is called compulsory because the party whom the judge orders to take it cannot avoid doing so in any way, nor, on the other hand, can he ask his opponent to be sworn. For if he is not willing to swear, he should be considered as having lost his case, except when he should give

some lawful reason for not doing so. An oath of this kind a judge should administer when a party brings a complaint before him in court of some violence, robbery, or fraud, which has been committed with regard to his property. If he can prove positively that violence was employed against him, or that he was robbed or defrauded, although he may not be able to establish by evidence how much property he lost for this reason, or what it was worth, the judge should, and can, estimate and appraise, according to his judgment, the property which the party says he lost, having investigated the character and standing of him who makes the complaint. And, in addition to this, he should order the complainant to swear that the property was worth as much, or was of an amount equal to the appraisement of the judge, and having made oath in this manner he should be believed, and his suit decided by this means, just as if he had proved it by witnesses. We also decree that, where a suit is brought before a judge, involving less than ten maravedis, and the facts can not be established except by one witness who is a man without suspicion and of good reputation; in a case of this kind the judge should administer an oath to the party whom he thinks will be most liable to tell the truth, and decide the suit according to the statements of the party who was sworn. Where, however, the plaintiff, voluntarily, desires to make such an oath he should be permitted to do so, and the other party cannot, nor should not, contradict it. An oath of this kind, and all others which a judge has power to administer to any of the parties, according to the laws of this our book, we decree shall be called oaths of compulsion.

The third kind of oath, which is called judicial, is when the adversaries are present in their suit before the judges, and one of them administers an oath to the other, directing him to swear, and stating that he will abide by what he says. The party to whom this oath is administered can refuse to take it, and demand that the other party take such an oath, and he of whom such a demand is made cannot decline to be sworn for the following reason: since he agreed that the suit should be decided by oath, and asked that his opponent be sworn, if the other makes the same request of him he cannot refuse, for it is not proper that the means which he himself selected for the purpose of determining the case should be rejected by him; and we decree that, if he will not be sworn, the judge shall decide that he has lost his case. This is called a judicial oath because the case being before the judge the opposing parties administer it to one another.¹

LAW III.

Who Can Give an Oath and Take It.

A party, as well as a judge, can administer an oath in court, as we have stated, but when a party administers an oath, or takes it, he should be twenty-five years of age, and not insane, or weak in mind, or a slave, and moreover he must live by himself, and not under the control of his father. Where he is not a person of this description, he cannot, without the order of him who has control over him, tender an oath to his opponent, and if he should administer it, and any injury result to the latter or to his property, the judgment rendered by reason of said oath shall not be valid. If, however, some other party

¹ The civil law recognizes several kinds of oaths, of which the *juramentum necessarium*, the *juramentum voluntarium*, and the *juramentum veritatis*, were, to a certain extent, the precursors of those mentioned in the *Partidas*. None of these were extrajudicial. The *juramentum in litem* was that by which the injured party attempted to establish the amount of the damages he had sustained, which was subject to revision by the court, whose duty it was to examine it carefully, and, if necessary, make an appraisement of his own, as required by Law V. This oath was authorized by the common law, but its application was not nearly as broad as in that of Rome. The oaths of wards, prodigals, and other persons under tutelage, could not be taken except in cases of absolute necessity, in accordance with the common law maxim: "*Minor jurare non potest.*"—Ed.

administers it to any of those interested, and he to whom it was administered is sworn in some matter which is for the advantage of his father or his master, his oath shall be valid, just as if his father or his master had taken said oath.

We also decree that, where a father has given, separately, as capital, some of his property, or a certain number of maravedis to his son, the said son, although he may be twenty-five years of age, cannot administer an oath to his adversary concerning property of this kind, or concerning any which he has gained by means of said capital, and if he does administer such an oath it shall not be valid as against his father, except where the latter has conferred upon him unlimited and general authority to do what he pleases in court with the said capital, for, under these circumstances, he can administer an oath. We also decree that, where a person is a spendthrift of his property and squanders it in evil practices and a judge prohibits him from disposing of, or wasting said property, and, afterward someone institutes proceedings against him concerning any portion of it, and administers an oath to him, it will not be valid, nor will he who is sworn in this manner gain any advantage thereby, except where the oath was administered with the consent of his guardian.

LAW IV.

When the Attorney of a Party Can Administer a Judicial Oath to His Adversary.

There are three special cases in which the attorney for another can, according to law, administer a judicial oath to his opponent in order to dispose of a suit. First, when by a power of attorney he was especially granted authority to do so. Second, when, by his appointment he was given and granted free and full authority to do everything which the party to the suit could do in the matter with regard to which he was appointed attorney. Third, when any one is an attorney in a suit which is of such a character that any profit or damage resulting from it will affect the attorney himself. This would be the case when a man who was to receive a debt from another, gives or sells to anyone all his rights against his debtor, and appoints him his attorney, in order that he can the better claim the debt as his own property. In an instance of this kind, or in another like it, an attorney has power to administer a judicial oath to his adversary, and it will be valid. But we decree that in no other way, excepting these three, where an attorney administers an oath of this description to his adversary as above stated, can he who makes it profit by it, or cause any injury to the party to the suit whose attorney administered the oath.

LAW V.

Who Should Be Sworn at an Appraisalment of Property Concerning Any Damage or Loss Which He Has Suffered.

Judges sometimes compel men to be sworn in actions at law for the reason that, in no other way, they can decide the controversy existing between them. This would occur when the plaintiff has proved his case with regard to the ownership of property which he claims as his own, or concerning any fraud or wrong which had been committed, and a dispute arises between the parties as to the value of said property, or the amount of damage sustained by reason of the wrong or fraud which was proved to have been committed. In instances of this kind, and in all others similar to them in which the laws of this our book grant authority to a judge to permit an oath to be taken by

the successful party with regard to an appraisement, we decree that it shall be administered in the following way: First, the nature of the property claimed by the plaintiff should be considered, and what loss he has sustained by not being able to recover it; for it may happen that he will suffer greater loss through not being able to recover said property, than it would have been worth if it had been disposed of by ordinary sale. We also decree that the judge shall consider this in estimating the damage sustained by the plaintiff by reason of the wrong or fraud which he proved had been committed.

When all these things have been considered, the judge should estimate or appraise the property, on account of the injury sustained by the party for any of the reasons above stated, and fix a certain amount to be sworn to, and the party should swear that, for the said amount, he would not have been willing to have lost the property claimed; or that he estimates the damages he suffered, by reason of the wrong or fraud, at the amount fixed by the judge. Moreover, we decree that an oath of this kind shall not be administered to anyone except the principal party to the suit. Where, however, a minor under fourteen years of age is interested in a suit, the oath can be administered to those who have him in charge, but they are not required to swear in his behalf, against their will, in matters which are uncertain. Nevertheless, if they are so anxious to promote the advantage of the minor as to desire to take an oath of this description they can do so, swearing that the said minor would not have been willing to have lost the said property, for the amount established by the judge, as we have above stated and the judge should decide the case according to the oath which they make; but where a minor is over fourteen years of age he can, himself, take an oath of this kind. Although guardians should not be compelled to be sworn in this manner, still, a judge can force them to take all other oaths which may be necessary in cases in which minors are interested.

LAW VI.

How Oaths Should Be Administered to a Minor Against His Guardian When the Latter Is Unwilling to Render a True Account, or Deliver Him His Property.

Where a guardian is disobedient, and is unwilling to render a true account to a minor after he comes of age, or to any other person who wishes to receive it in his name; or refuses to deliver him his papers, or produce his inventory containing a list of the property which he holds in charge for him; and it is proved that the minor suffered any loss of his property through the fault or fraud of his guardian; we decree that, in cases of this kind, the judge can administer an oath to the party who is a minor, to establish the value of the property, which his guardian refuses to surrender to him, or the sum at which he estimates the damage or loss which he has suffered on his account; and the suit should be determined by his oath, the judge, at the same time, making an appraisement and estimate of the amount which he ordered the minor to swear to, as we previously stated. But where the guardian dies before a demand has been made upon him in court for the property, and the minor desires to institute proceedings against his heirs, on account of the fraud or loss which the guardian committed against him, or concerning any of the matters which we have mentioned above, the judge should not, under these circumstances, administer an oath of this kind to the minor against the said heirs. He should, however, exert himself to ascertain the truth as to the value and nature of the property of the said minor, which was placed under the control of the guardian, and what rents or profits were obtained from the same. After he has secured this information he should render judgment

against the heirs of the guardian, in favor of the minor, for such an amount as he estimates the property to be worth, and if he is not certain of this, he should make an estimate and appraisement of how much the property of the minor, if it were sold at the market price, would bring. He should, afterwards, cause the minor to swear that his property was worth as much as his appraisement, and he should then decide the suit in accordance with this oath.

We decree, however, that if the heirs of a guardian are guilty of fraud with respect to the property of a minor, or if said property becomes depreciated through their fault; a judge can compel the plaintiffs to be sworn in the same way as they would have done against a guardian, if he were living, and had committed fraud of this kind with regard to the property of a minor, or caused it to be depreciated in value in this way; and he should decide the suit by an oath of this kind, in the manner which we have mentioned above in the beginning of this law.

LAW VII.

Who Can Receive an Oath.

Although we have previously stated that a person under age, or who is subject to the control of another, or who is a slave, or insane, or of weak mind, or a spendthrift, cannot administer or offer a judicial oath to his opponent for the purpose of disposing of an action at law, nevertheless, we decree that, if any of his opponents administer to him any of the oaths above mentioned, and he swears to something which results to his advantage, an oath of this kind, whether it be true or not, must be kept against him who considered himself satisfied with it when he administered it. We also decree that, if he who took the oath was under the age of fourteen years, or was of weak mind or insane, although he had evidently sworn to a lie, his oath should not be invalid for that reason, nor can the penalty of perjury be inflicted on account of it. For every man may well suspect that persons of this kind do not knowingly tell falsehoods, or act deceitfully, but, that, through want of intellect, or on account of their great silliness, or because they are under age, they sometimes swear to and state things which they should not; and therefore the injury which those receive who administer an oath to such persons should be endured by them, for the reason that it is caused by their own fault.

LAW VIII.

When a Person to Whom an Oath Has Been Administered Can Repent.

Sometimes parties to a suit agree that the controversy between them may be decided by oath, and it afterwards happens that the one who asks the other to be sworn repents. In an instance of this kind we decree that the party who asks the other to be sworn can repent if he desires to do so, before his opponent whom he requested to make oath has done so, but after he has repented once, he cannot subsequently tender the oath to him. Moreover, we decree that the party to whom an oath has been tendered by his adversary, can, in his turn, ask the latter to do likewise, before he himself accepts. This should be done in the same way in which the oath was administered to him; for, after he has accepted it, he must be required to do one of two things; either be sworn, or pay or deliver up the property which is in dispute; and we also decree that the party to whom the oath is administered should take it in the same way in which it was given. For if his opponent should tell him to swear by God, and the other party should say that he swears by his soul, or by

those of his children, or they should disagree in any other way whatsoever like this, the oath will not be valid, and we decree that he should be sworn again. But where he who administers an oath to another tells him to swear by something which is forbidden, an oath of this kind will not be valid, even though the other party should take it. Where, however, either party tells the other to swear by his word positively and the other says: "I swear to you that this is true"; or where the controversy is between monks, and they are asked to make oath by saying, in Latin, "*Crede mihi*" which means "Believe me in this matter, as I believe in God"; either of these oaths will be valid, since he who administered them is content that his opponent should take them in that way.

We also decree that, if a party to whom an oath is tendered, accepts it and is prepared to be sworn, and he who tendered it should release him or not wish him to be sworn, it is as valid as if he had done so, since the other party, and not he, is responsible for his failure. But if at the time the oath was tendered him he did not accept it, and was not satisfied with it, and he afterwards desires to be sworn, his offer should not be accepted without the consent of the party who tendered him the oath in the first place.

LAW IX.

Concerning What Matters an Oath Should Be Tendered.

The matters with regard to which a person can tender an oath to another should concern the party who makes the proposal, because he who is sworn can the better profit by the oath after he has made it. And it is necessary that he be interested in the matter in one of the following ways, namely; where the property concerning which the oath is tendered is absolutely his, or he has some right in it, for, if he is not interested in it in one of these two ways, the act will not be valid, nor will the oath be of any advantage, as against the other party who was the owner of said property, for the reason that it was not he who claimed it. Where, however, he who tenders the oath is the guardian of a minor, or an attorney or steward of a council, a town, or a hospital, and he has a contest in court on account of property of which he has charge, and cannot produce the testimony of witnesses or documentary evidence to support his case, and the matter is in doubt; in an instance of this kind a guardian, or any of the above-mentioned persons can tender a judicial oath to his opponent, and his oath will be valid, for he can make it in no other way.

LAW X.

How Suits Relating to Some Town Can Be Decided by Oath, as Well as Cases Involving Accusations of Crime, and Those Concerning Marriage.

Cities and towns sometimes have property which belongs in common to all the people of that neighborhood, as, for instance, pastures, meadows, commons, or other lands of this kind, and a doubt may arise where an individual institutes proceedings concerning said property, whether, or not, a controversy of this kind can be decided by oath. We decree that, if the oath is tendered in good faith and without any fraudulent design, and not as a matter of favor, and no other proof is available to establish the facts in the case, this can be done. We also decree that, in every criminal case, where the facts cannot be proved by consent of the parties, or by witnesses, one of the parties can tender an oath to the other, if both agree that this shall be done. We

also decree that, where the facts in a criminal case cannot be established except by manifest tokens or by one witness, a judge should not tender an oath to the party who produces the testimony, just as we stated above that he could tender it, and consent that it be taken in certain other cases which are not criminal; but he should rather discharge the accused party, since he does not find that the evidence against him is conclusive, except where the man is degraded, or of bad reputation, or suspected; for, on account of such indications, or on the testimony of one witness who was without suspicion, and gave evidence against him, he may not be put to the torture; since in an instance of this kind the judge can tender the oath to the party who made the accusation, if he is a man of good report, and the case is one in which punishment by loss of blood is not involved. We also decree that, where there is a dispute in court between certain persons on account of a marriage, or where the abbot or prior of a convent, or the master of some order, sues another party, who is his monk, his prior, or his lay-brother, cases of this kind, and others like them can be decided by oath where all the parties agree to it. And we decree that the same rule shall apply where a controversy arises concerning the performance of some act, as, for instance, if any person is told that he should swear whether he had done something, or not done it, or whether he had given something, or had not done so; and also where a dispute exists concerning a fuero, or custom of some locality, with regard to its true interpretation, for cases of this description can be determined by oath in the same way as the others.

LAW XI.

What Matters He Who Takes an Oath Should Consider.

He who takes an oath should be very careful not to say anything by which he may commit perjury, for if the oath which is taken by him is to tell the truth absolutely, as, for instance, that by which a case is determined of which we treat in the laws of this Title, as well as the oath which is taken by witnesses, he should, in cases of this kind, state what he certainly knows, or if he does not remember so that he can make a positive statement, he should then either take time in which to recall the matter, or say that he does not absolutely know the truth of the same. But where the oath is of such a character, that the party who has to make it, is bound to state at least, his belief in regard to the fact to which he swears; as for instance in the case of the oath of the *mancuadra*,¹ of which we have previously spoken, it will then be sufficient for him to say that he believes, or does not believe the matters concerning which he is interrogated, and what he states according to his belief will be as valid as if he had stated it with certainty.

Before he makes such a statement as this, however, he should consider in his heart whether he believes without doubt that the matter is as he answers under oath, for if he happens to have any uncertainty in his mind, he should take time before answering the question put to him, in order to remember and answer it positively. Or, if the oath is one by which he who is to make it appraises property, or estimates the loss which he has sustained because his opponent was unwilling to surrender it to him; or had maliciously transferred it; or had been guilty of wrong or fraud; he should then estimate the loss or damage which he has suffered on this account justly, and without covetousness. Where a person exercises care in taking any one of these three different oaths and observes what is here set forth, he cannot easily commit perjury.

Moreover, we declare that a man should not take an oath from a whim, or through levity, but only for some suitable wrong; as, for instance, by order of

¹ The mutual oath of good faith which the litigants make.

the king or a judge, or on account of some contract, agreement, or stipulation, which is of such a character as will not result in the dishonor or injury of the king, or of the kingdom, or of the soul of the party who takes it. And although the party who takes an oath of this kind may have so little intelligence that he is not required in the sight of God, or in that of the world to keep it, yet he who dared to take it, should be punished.

LAW XII.

What Advantage Results from an Oath.

The ancient sages declared, and the Apostle St. Paul agrees with them, that an oath is sometimes the culmination and the end of the disputes which arise among men. Wherefore, if either of the parties should swear, with the consent of his opponent and the permission of the judge, that he has purchased property of the former for a certain amount of maravedis, the other party shall be required to deliver him said property just as if he had proved that he had sold it to him; and, on the other hand, the other can demand of him the price of the property by reason of that same oath, except where his opponent swears that he purchased the property of him and paid the price of the same.

The same rule will apply where he swears that he has given some property in pledge to his opponent for a certain amount of maravedis which the latter lent him, for, after an oath of this kind, his opponent shall be required to surrender to him the property which he swore he had left with him by way of pledge; and, on the other hand, the latter will be bound to pay him the amount of maravedis which he swore he had received as a loan on said property. We also decree that, if he swears that if a promise was made to give him some land, or other property, with his wife at the time of his marriage, he can claim it and it should be delivered to him, just as if he had proved that it had been promised him for that reason. After the said property has been delivered, if the marriage is dissolved by death, or for any reason during his lifetime, he will be required to do justice, or deliver that dowry to his wife, or her heirs; for the reason that he swore that it had been given to him.

LAW XIII.

What Advantage Results to a Party Who Makes Oath Concerning Property Which Belongs to Him.

Where a dispute arises between parties in court concerning the ownership of a vineyard, a field, or any other property whatsoever; if the plaintiff makes oath, with the consent of the defendant or with the permission of the judge, that the property he claims is his, the defendant is required to deliver it to him. We also decree that, if after it was delivered he should lose control of it, he can demand it as his own from any one whom he finds in possession of it. He can do this on account of the oath which he took, and the occupancy which he gained by reason of it; except where the property comes under the control of some one else who alleges and proves that it is truly his. In this case the oath which one party made with the consent of the other should be of no disadvantage to its true owner, since neither he, nor his attorney, consented that the oath should be administered. Where, however, the party to whom the oath was tendered held the property concerning which oath was made, and swore that it did not belong to the party who claimed it; he can set up a defense against him because of the oath, whenever he is sued for said property. But if he should lose possession of it in any way, he who

made oath in this manner has no claim, by reason of said oath, against any other person whomsoever in whose possession the property is found, even though the party with whose consent he was sworn is the one in possession. But where he who holds the property swears that it is his, and does so with the consent of his adversary who claimed it from him; in a case of this kind we decree that he who made the oath can protect himself by means of it from him who tendered it to him, and against his heirs, if they ever subsequently demand it of him. We also decree that if he loses possession of the property concerning which he made oath in this manner, he can claim it of anyone in whose possession he finds it, in the same way in which we have already stated that the plaintiff could do.

LAW XIV.

How an Oath Causes One Man to Be Bound to Another.

Where a controversy exists between parties with regard to property, and the plaintiff swears that his opponent owes him what he claims, and this oath is taken with the consent of the defendant; although he against whom the claim is made was not really the debtor with respect to the property concerning which his adversary made oath, he is, nevertheless, obliged to make payment, just as if it had been proved that he really owed it.

We also decree that, where there is a dispute between parties respecting some property which one of them had already begun to acquire through lapse of time, and one party makes oath concerning it with the consent of the other, the rights of the one who made said oath will remain unimpaired from the day on which it was taken, so as not to be lost by lapse of time, just as if the suit had been commenced by complaint and answer, as we showed in the laws of our book which treat of how property can be lost or gained by lapse of time.

LAW XV.

The Disposition of a Suit by Oath Is as Valid as If It Had Been Determined by Judgment, and What Advantage a Final Judgment Has Over an Oath.

It is a well known fact that a suit disposed of by oath, in any of the ways we have mentioned above, is as valid as if it had been terminated by a judgment; and although an oath and final judgment have equal force in putting an end to actions at law, there are, however, instances in which there is some distinction of superiority between them. This would be the case where a suit was terminated by an oath, and the party who made it was afterwards sued again, and defended himself by saying that he is not required to answer for the reason that the case had already been settled by oath, and the other denies it. In a suit of this kind if the parties administer to one another the oath taken in that same suit, that which was subsequently given shall be valid, and not the first one. This will not apply to a suit terminated by judgment, for after final judgment has been given in any matter concerning which no appeal is taken; and, another suit is instituted subsequently with regard to the matter by the same persons; and a second judgment is rendered contrary to the first; that which was rendered in the first place will be valid and the second will not.

We also decree that, where a suit was decided by oath, and it is again brought in court, and the defendant, who remembering the oath, answers and loses his case; the judgment last rendered shall prevail, since he did not take an appeal from it, and he cannot subsequently avail himself of the oath which he took in the beginning, which would not be the case if the suit had been

terminated by judgment. This advantage a suit determined by judgment has over one determined by oath.

We declare that it has another advantage, for where a controversy arises between parties in court on account of emancipation, the plaintiff alleging that the defendant was his slave, and that he enfranchised him, and the latter denying that this is true; an oath should be tendered the plaintiff, and he should swear that it was as he alleges, and that he had emancipated the defendant; then he who made the oath shall have in the person of the emancipated party the rights set forth in the laws of this our book which treat of emancipated slaves; but he does not, by means of this oath, gain any right to inherit his property which he could do if he had obtained a judgment against him. We also declare that a final judgment has still another advantage over an oath, for a suit which is decided by oath can be set aside by the discovery of documentary evidence, recently found, where it is such that by means of it the contrary of what he who was successful in the suit swore to can be established, as we have above stated. But where the case has been decided by judgment, from which neither of the parties has taken an appeal, it cannot be set aside on account of documentary evidence, or by means of any newly discovered testimony; except where the suit concerns the king or pertains to the entire kingdom, for then the judgment can be revoked for some of the above-mentioned reasons, although no appeal should be taken from it, as we have stated in the Title which treats of Judgments.

LAW XVI.

In What Matters an Oath Has Greater Force Than a Final Judgment.

Although we stated in the preceding law that a final judgment has greater force in many respects than an oath, still, in some matters, an oath has greater force than a final judgment. This is the case where a party who is over fourteen years of age, and under twenty-five, enters into some contract or agreement, and swears that he will not avoid complying with it on account of being a minor, for then he cannot afterwards abrogate it, although he may be able to show that it was made to his injury, or in a way to cause him loss. But where a judgment has been rendered against him, even though he did not appeal from it at the time when he should have done so, if he is deprived of any of his rights by reason of said judgment, or is defrauded or wronged on account of it, he can petition the judge to set it aside, or review the case.

We also declare that the force of an oath is so great that it releases a debtor from an entire debt claimed of him in court, just as if he had paid his opponent what he demands where he takes oath with his consent. For this reason we decree that if the party who swore that he did not owe his adversary what he claimed, doing this by his consent, and afterwards, not remembering it, should pay the debt from which he was already released by oath, he can ask that the money be returned to him, for the reason that he paid what he did not owe. We decree that he can do this, although he had sworn to what was false, for the oath which he made with the consent of his opponent released him from the debt, so far as any judgment in this world is concerned, although Our Lord God can call him to account whenever He desires to do so.

But where judgment is rendered on the claim sued for by the plaintiff, by which the defendant was entirely released because his opponent could not prove what he alleges; and he who was released by the decision of the judge really owed what was demanded of him, and afterwards paid it to his opponent, not remembering that he was released from the claim by the judge; he cannot subsequently make a demand for it, even though he may state that he had paid through mistake something which he did not owe; because in

a case of this kind truth has greater power than a judgment, so that he who is a genuine debtor of the other party, although he may have been released by a decision of court, always remains, according to natural law, indebted for what he owes.

LAW XVII.

To What Persons an Oath Is a Source of Benefit, or Injury.

The force arising from an oath is so great that both those who make it and their heirs are benefited by it, as well as every other person whosoever that purchases or obtains the property concerning which the oath was taken. On the other hand, we declare that it is a disadvantage to those who tender it, and to their heirs, except where he who does so is the guardian of a minor or of other persons, or is a slave, or a son under the control of his father; for, in cases of this kind, an oath made by such persons cannot be a source of benefit to them or to their heirs, but to those in whose name it was made. We also decree that, if any partners who have bound themselves jointly and severally, to pay, to do, or to give something to another party, the oath which any one of them makes, or administers to his opponent judicially with reference to that debt, will be productive of either benefit or disadvantage to him and to his associates.

We decree that the same rule shall apply when partners have a debtor who has bound himself to give something to, or to perform some act for, them so that any one of them can claim it in the name of all; for if one of them should tender a judicial oath to his opponent on account of said debt, it is not only a matter of profit or injury to him who tendered it, but also to all the others. We also decree that an oath taken by a debtor is of advantage to his surety, and that of the surety an advantage to the debtor, if he swears that he has made a payment; but where a surety swears that he will not be bound for the man whose surety he is said to be, an oath of this kind although it is of advantage to the party making it, affords none to the debtor.

LAW XVIII.

In What Matters a Suit Is Entirely Terminated by Oath, and in What Matters It Is Not.

Where one man has a controversy with another concerning a contract involving personal or real property, or relating to some other agreement or act of any kind whatsoever; if the parties consent to decide the controversy by oath, they can do so, and the judge should permit it. There are, however, instances in which a suit cannot be finally decided by oath, and this would be the case where a woman asks to be placed in possession of property which belonged to some deceased person, by whom she is said to be pregnant, and if an oath is tendered that she is pregnant by him, instead of evidence, and she swears to this, she should be put in possession of the property in the name of the unborn child. Nevertheless, after the child is born it cannot profit by the oath of its mother for the purpose of finally terminating the suit, for a suit may be brought against the child, to determine whether it belongs to the deceased or not; nor, on the other hand, will it be any disadvantage to the child if the mother should tender an oath to her adversary, and he should swear that she is not pregnant by said deceased person, although it may prevent her from being placed in possession of said property, as we stated above; for an oath is not a source of injury or advantage to the other party, except where he who tenders or accepts it is the guardian of a minor or of a man without intellect, or where he is one of those persons who we declared in the laws of

this Title have authority to tender an oath for another. However, though the judicial oath which the pregnant woman took, as stated, may not be productive of advantage to her child, so far as any confirmation of proof is concerned, nevertheless, a strong presumption arises from it; so that the child and its mother should remain in possession of the property of the deceased until the other party introduces conclusive contradictory testimony showing that it was not the child of the person who is dead.

LAW XIX.

In What Way Christians Should Be Sworn.

We wish to free men from controversies and disputes as far as we can do so, and for the reason that these frequently arise with respect to oaths, we desire to show in a positive way in this law how Christians should be sworn, and afterwards we shall show how Jews and Moors should make oath. We decree that Christians shall be sworn as follows, to-wit; by placing their hands upon some of those things mentioned in the first law of this Title, and he who receives the oath from the party who is to make it, should conjure him by speaking as follows: "You swear to me by God the Father, who created heaven and earth, and all things that are in them; and by Jesus Christ, His Son, who was born of the glorious Holy Mary, the Virgin and by the Holy Spirit; who are three persons in one true God, and by these Holy Gospels, which recount the words and acts of Our Lord Jesus Christ." And if he holds his hands on the cross, he should say that he swears by that cross made in imitation of the one on which Our Lord Jesus Christ died for the salvation of sinners. And where he places his hands on the altar, over which is consecrated the body of Our Lord Jesus Christ, he should say that what is demanded of him is not as his opponent states, but as he himself declares, and this according to the matter concerning which he makes oath.

In addition to all these words, he who takes the oath must reply to the other party who receives it from him; "I swear this as you have stated it." And after this, he who receives the oath must say to him, "So help you God," as well as the words which he spoke to him; and conjure him by the Gospels, or the cross, or the altar, on which he swears, to tell the truth. He who takes the oath should answer, "Amen;" without any contradiction whatever, for it is not proper that he who takes an oath should be ill-treated on account of any right which he claims.

LAW XX.

In What Way Jews Should Be Sworn.

Jews who have to make oath should do so in the following manner, namely: he who requires an oath of a Jew should accompany him to the synagogue, and the Jew who is to be sworn should place his hands on the Book of the Law, with which they pray, and Christians and Jews should be present, to see how he takes the oath. He who receives the oath of a Jew, must conjure him in the following manner: "Thou dost swear So-and-So, Jew, by Almighty God who created heaven and earth and all other things; and who said thou shalt not swear by My name in vain; and by God who made Adam, the first man, and placed him in Paradise and ordered him not to eat of the forbidden fruit, and because he did eat of it, banished him from Paradise; and by the God who created the sacrifice of Abel, and rejected that of Cain; and who, at the time of the flood, saved Noah and his wife and his children and their wives, and all living things which he placed in the Ark, in order that the earth might,

afterwards, be inhabited; and by that God who rescued Lot and his children from the destruction of Sodom and Gomorrah; and by that God who declared to Abraham that all nations should be blessed in his descendants, and chose him and Isaac, and Jacob his son, and ordered that all those of his race should be circumcised; and who saved Joseph from the hands of his brethren that he might not be killed, and bestowed upon him the favor of King Pharaoh, that his race might not perish in time of famine; and who preserved Moses, while a child, from death, when he was thrown into the river, and, afterwards, when he was grown, appeared to him in the likeness of fire; and inflicted the ten plagues upon Egypt, because Pharaoh would not let the children of Israel go; and caused them to offer up sacrifices in the desert, and open a way for them through the sea, by which they passed over on dry land, and killed Pharaoh and his army, who pursued them in that sea; and who gave the law to Moses, on Mount Sinai, and wrote it with his finger on tables of stone; and appointed Aaron his priest, and destroyed the sons of the latter, because they offered sacrifice with strange fire; and who caused the earth to swallow up Dathan and Abiram, and their companions alive; and who gave the Jews manna in the desert to eat, and caused sweet water to burst out of dry rock in order that they might drink; and who supported the Jews in the desert for forty years, so that their clothing did not grow old, or wear out; and who, when the Children of Israel were fighting with the Amalekites, caused Moses to raise his hands, in order that they might be victorious: and who ordered Moses to ascend the mountain, after which he was never seen; and who, moreover, was unwilling that any of those who departed from Egypt should enter the Holy Land, for the reason that they did not obey Him, and were not thoroughly grateful for the benefits which He conferred upon them, except Caleb and Joshua, whom he caused to pass the river Jordan on dry land by turning back the water: and who overthrew the walls of the city of Jericho, in order that Joshua might take it with greater ease, and who caused the sun to stand still at midday, to enable Joshua to conquer his enemies: and who selected Saul for the first king of the people of Israel, and after his death caused David to reign, and conferred upon him and all other prophets the spirit of prophecy, and preserved him from many dangers, and said of him that he had found a man according to his own heart; and who caused Elias to ascend up to heaven in a chariot of fire; and performed many good actions, and many wonders among the people of the Jews. And you swear also by the ten commandments of the Law which God gave to Moses." To all these things he should answer once: "I swear." And the party who receives the oath should say to him that if he knows the truth and denies it, or conceals it and does not tell it in the matter respecting which he is sworn, all the plagues that came upon the people of Egypt shall come upon him, as well as all the curses of the Law, which are imposed upon those who despise the commands of God; and, when all this has been said, he should answer once "Amen," without any opposition, as we have stated in the preceding law.¹

¹ This oath, while the greater part of it has evidently been copied verbatim from that of the Visigothic Code, is considerably abridged, the concluding sentences, which contain much of the Apostles Creed and assert the divinity of Christ, being omitted, probably because it has been found that the Jews did not consider them binding and swore to them with mental reservations. Neither are the human and divine penalties for violation of the oath so severe as in the more ancient code, disclosing the fact that, because of the existence of more enlarged ideas concerning the administration of criminal justice, such furious maledictions and punishments were not only without efficacy, but superfluous, and defeated the object for which they were devised. (For. Jud. XII-3-15.)—Ed.

LAW XXI.**In What Way Moors Should Be Sworn.**

Moors have their distinct oath which should be taken in the following manner. He who is to take it as well as the person who is to receive it, should go to the door of the Mosque, if there is one there, and if not to a place designated by the judge. The Moor who is to be sworn should stand up, and raise his hand toward the south, directed to a point called Al-Quiblah. Then he who is to receive the oath should utter these words: "Now dost thou swear to me, So-and-So, Moor, by that God than whom there is no other, he who possesses, knows, and destroys, and has power over all things, and who created the Al-Quiblah, facing which thou dost pray: and thou dost also swear to me by what Jacob received from the faith of God for himself and for his children, and by the homage which he performed to preserve it: and by the truth which thou hast, which God placed in the mouth of Mohammed, the son of Abdallah, when he appointed him his prophet and his messenger, according to thy belief; that what I say is not the truth, or that it is as thou sayest. And if thou dost swear falsely, that thou mayest be deprived of all the benefits of God and of Mohammed, whom thou sayest was His prophet and His messenger, and that thou mayest have no share with him, nor with the other prophets in Paradise; but that all the penalties which are mentioned in the Koran, which God will inflict upon those who do not believe in thy law, may be visited upon thee." To all this above stated the Moor who takes the oath should answer: "This I swear;" repeating all the words himself, just as he who receives the oath speaks them, from beginning to end. And, above all, he should say "Amen."

LAW XXII.**In What Place an Oath Should Be Administered, and When.**

A judge should carefully investigate who those men are who have disputes or actions before him; for, as some are more eminent in rank than others in matters which happen outside of court, so in transactions which are brought before judges, they are entitled to some special distinction, by reason of their persons. Wherefore we decree that when parties come to an agreement before a judge that a suit shall be decided by oath; or when a judge deems it proper to administer a compulsory oath to anyone of the parties in suits in which he should do so, or when he causes both parties to be sworn that they will conduct the case honorably and without malice, as we shall show hereafter, he should carefully consider who the persons are who are to take the oath. For, if one of them is a man of noble rank, who should not appear before him in the case, but may send his attorney; or a married woman; or a young lady; or a widow living honorably in her own house; or a man so very old or feeble that he cannot leave his home through such age or infirmity; or if the party is an object of enmity, so that he cannot appear to be sworn without danger of death; after the judge is certain of any of these things, he should send someone to the houses of these persons to swear them. But where they are not persons of this description, they should appear before the judge, and take the oath in the church, or on the altar, or on the cross, or on the Gospels; or outside of the Church, as, at the door, or in any other place where it is proper to take an oath, and which may be approved of by the judge. Any of these oaths can be administered in the beginning or the middle of a suit, or later before judgment is rendered.

LAW XXIII

When and How Parties Should Take the Oath of Accusation, Called, in Castilian, the Oath of Mancuadra.

In order that men might proceed more directly and faithfully in actions at law, the wise men of the ancients deemed it proper that judges should take the oaths of both plaintiffs and defendants, as soon as the suit had been begun by complaint and answer. This is another kind of compulsory oath, in addition to those we mentioned in the laws of this Title. Where a plaintiff is not willing to be sworn, the defendant should be discharged; and, moreover, if the defendant is obstinate, and refuses to take the oath, his case should be considered lost, just as if he had acknowledged everything which his opponent claimed. This oath should be taken in every suit, whether personal or real property is in dispute; or whether there is a question of debt; or whether the suit is one which involves the shedding of blood, or in every other controversy whatsoever. It is called, *juramentum calumniae*,¹ which means an oath which men take to conduct a suit honorably and without fraud. It is also called in some localities *mancuadra*, for the reason that it contains five things which both plaintiff and defendant should swear to. For as a symmetrical and perfect hand has five fingers, so this oath is perfect when the parties swear to these five things which we will proceed to mention here. The first thing which a plaintiff should swear to is, that he is not induced to prosecute his claim maliciously, but through a desire to obtain justice; the second, that as many times as they question him in court concerning the said claim, he will always answer what he understands to be the truth without the conscious introduction of any falsehood, fraud, or deceit; the third, that he has not promised, and will not promise, and has not given, and will not give, anything to the judge or the clerk in the suit, except what it is customary to give them on account of their labor; the fourth, that he will not introduce false evidence, false witnesses, or forged documents, or make use of them in the suit; the fifth, that he will not ask for more time through malice and with the intention of protracting the case. Moreover, as soon as the plaintiff has been sworn the defendant should also make oath in the following manner, namely; that he only opposes the claim of his adversary for the reason that he desires to protect and establish his rights; and he should also swear to all the other matters which we have stated above that the plaintiff should swear to, and observe.

The principal persons in the case, as, for instance, the plaintiff and defendant, but not their attorneys, should take this oath. However, when the suit has been begun by complaint and answer, and a request is made for either of the parties to take the oath, the judge should send for the principal parties to the suit, if they are in that neighborhood, and cause them to be sworn. When they are elsewhere, the judge should send his letter to the judge of the district in which they are, that he may cause them to take this oath, as above stated, and send it to him in writing, sealed with his seal; and the judge to whom the letter is sent should do so.

LAW XXIV.

What Persons Should Take the Juramentum Calumniae in an Action at Law.

The principal parties, and not their attorneys, should take the oath which we have referred to in the preceding law, for the reason that the truth can be more readily ascertained through them than through others. There are, however, instances in which attorneys who begin actions, can, and should take this oath. This is the case where the council of a city, or of a town, or a

¹ See Gaius, Institutes, IV, 175 *et seq.*

bishop, or the chapter of some church, or a prior or abbot of some monastery, or the master or a convent of some order, sends its attorneys to bring suit or answer in some legal proceeding, and on whom authority is especially conferred to take this oath. Attorneys of this kind are required to swear on the souls of those whom they represent, in such proceedings as are instituted by them. Where, however, a bishop, or any of the persons aforesaid begins a suit himself, he must take this oath, and where a bishop is sworn, the Gospels should be placed before him, but he is not required to place his hands upon them.

We also decree that when the guardians of minors, or the keepers of hospitals, are compelled to make complaint, or answer for those in their charge, they should, themselves, take this oath, and where there are several guardians it will be sufficient if one of them be sworn; and none of them can, for any reason, avoid doing so, because they have under their control all the property of said minors, and have better facilities for knowing the truth. And, especially, none of them should, or can, be compelled to swear to state, in that suit, anything that he does not believe, or does not know. If, however, a minor is intelligent and familiar with his own affairs, and has begun the suit by complaint and answer with the permission of his guardian, then he should take the oath, and not the party who has charge of him. What we have stated above relating to the principal parties to a suit, and not their attorneys, being obliged to be sworn, does not apply to such attorneys as are appointed in lawsuits in which they are interested; for they can take an oath of this kind, since they will be either benefited or injured by the result of said suits, as stated in the preceding laws.¹

LAW XXV.

When a Judgment by Oath Can Be Set Aside.

A suit which has been decided by an oath in court, which was taken by the order or permission of a judge, cannot afterwards be set aside except by means of genuine documents produced in court by the party against whom the oath was made, and who states that they have been newly discovered, and that, by them, he desires to show that what his opponent swore to is not the truth; for, in an instance of this kind, the decision, rendered by the judge on account of said oath, as above stated, can be set aside. This would also be the case, where a party sues an heir for a certain sum of maravedis, or for some other property, stating that it had been bequeathed in the will under which the said heir claimed; and, before the will is produced, the heir tenders him the judicial oath, and the plaintiff swears that the testator left him the said property, and, on account of said oath, what he claims is delivered to him; and after the will is opened, it is found that it does not contain what the party swore to, then the said property shall be taken from the party to whom it had been delivered, and returned to the heir. This is done for the reason that, before the will was opened, it was not possible to ascertain the truth of the matters which it contained, and make any stipulations or oaths concerning them until the words inserted and inscribed therein had been examined and understood.

But if the party who claims the bequest of the heir in court should state that the testator left him the property, and that he could not prove it by wit-

¹ The application and effect of the *juramentum calumnie* are treated at great length in the Code of Justinian, from which these laws of the *Partidas* are borrowed almost without alteration. Its object is tersely expressed as follows: "*In isto iuramento adiciendum est, nullam in tota lite exacturum probationem nisi quam pro veritate putat quis necessario esse exhibendam, ne saepius iuret in causa.*" (Corp. Jur. Civ. Cod. II.59.)

By the rule of the civil law this oath was ordinarily administered to the parties to a suit and their attorneys to insure that a just cause of action existed, and to prevent them from adopting improper methods in the conduct of the case.—Ed.

nesses or by the will itself, but says that the testator secretly and especially ordered the heir to deliver to him the said property, and that he desires to establish this by his oath; in that case, the heir is required to swear or compel his opponent to do so, and the case should be decided by this oath. When a suit is determined in this manner, the judgment cannot afterwards be set aside, even though such a bequest is not found in the will.

Moreover, we decree that every suit decided by oath taken and tendered with the consent of both parties, without the permission or order of a judge, cannot be set aside by evidence or documents subsequently discovered; although we stated above that other oaths administered by a judge, or permitted by him to be tendered judicially to any of the parties, can be annulled by newly discovered documentary evidence. The wise men of the ancients approved of this for the following reasons, namely; because the oath which the party made, with the consent of his adversary, and without the permission of the judge, when it is not true, only deceives his opponent, who tendered it to him, and shows contempt for God; but he who is sworn by order of a judge, and does not tell the truth, deceives the judge as well as his adversary, and also shows contempt for God by his false oath. Wherefore he cannot as easily escape the judge, whom he deceives, as he can God, and for this reason the wise men of the ancients deemed it proper that a decision based upon an oath administered by the judge and not the other, could be set aside, as we have already stated.

LAW XXVI.

What Penalty He Deserves Who Swears to a Lie.

Where anyone swears to a lie in a case, whether a judge or his opponent tendered him the oath, we cannot inflict upon him any other penalty than that which God may desire to inflict; for since his opponent or the judge administered the oath to him, stating that they would be satisfied with what he swore to, they have not the power subsequently to impose a penalty upon him. But where a person has been produced as a witness, and, after he has been sworn, it can be proved that he knowingly swore to a lie; he should pay to the party against whom he testified all that was lost by his testimony, and the penalty for perjury can also be inflicted upon him. Where anyone loses his life or a limb through such false testimony the party should suffer a similar punishment. We will also mention an additional instance, as where one party swears to another, or enters into an agreement or contract with him to perform some act for him, and fails to do so; such a person becomes, for this reason, a perjurer, and should be punished by not being believed in anything he testifies to, and should not be considered the equal of other men, as will be shown hereafter in the Title treating of those who commit some act by which they are discredited.

LAW XXVII.

What Excuses Those Who Make Oath May Offer So As Not to Incur the Guilt of Perjurer, Although They Do Not Observe What They Swear to.

Men can avoid incurring liability for perjury on account of the oaths which they take, even though they do not keep them, where they are able to offer some lawful reason for not complying with their obligations. This would be the case where some one states that he could not observe what he swore to, since, while on the way to comply with it, he was taken prisoner, or became ill, or was delayed by an inundation, or by snow, or by violence, or through fear of well-known enemies who occupied the highway; or where he had something

to give, or to send by a certain man whom he believed to be a faithful messenger, but who acted disloyally; or because he, or his messenger, was deprived of the property; or that it was accidentally lost; or where he swears to go somewhere, and the king, or his lord, is not willing for him to go; for, in the case of every oath, the order of a lord or a superior who should be obeyed is understood to be reserved; and this is the case because the parties are more under the control of the persons aforesaid, than they are under their own, and their commands are compulsory.

We further decree that, where a person who has a claim against, or a controversy with, another, places his case in the hands of his adversary, and swears to do what he directs, and he in whose hands it is placed, orders him to do something improper; as, for instance, not to remain any longer in the service of his lord; or not to render him any assistance; or not to enter the court of the king; or to leave his wife, or disinherit his children; or something else as unjustifiable as this, or more so; he is not required to obey, and is free from the guilt of perjury, exculpating himself by reason of the impropriety of what he was ordered to do. We declare that the same rule applies where he is directed to do something which he cannot perform. This would be the case if he were told to pay his opponent ten thousand maravedis, when he was not worth a thousand; or directed to give him every thing he possessed, and remain in poverty deprived of all his property, or the greater portion of it; or where he is ordered to do something, that he would, under no circumstances, have sworn to do, if it had been communicated to him beforehand.

We also decree that a man can exculpate himself from perjury for another reason. For where anyone swears to give something, or to perform an act at an appointed time, and the party for whom he has to do this, releases him or prolongs the time, he will not be liable for punishment for perjury before it has elapsed. We decree that the same rule shall apply where a person is ordered to do something which would endanger his soul. Moreover, we decree that, where a loan is asked of another, and the borrower, before he receives it, swears that he will pay it, trusting that the party will make the loan and it is not made by the party asked, the other party is not bound to comply with his oath; for we should understand that it was evidently the intention of the party taking the oath, to pay it at that time, if it had been loaned to him. The same rule applies where anyone places arms in trust, in any way whatsoever, and causes the party who receives them to swear that he will return them whenever they are asked for; he who takes the oath is not required to return them, if he finds that they are to be used against the king or the kingdom, or finds that the party is insane and will employ them for some injurious purpose.

LAW XXVIII.

What Other Excuses Those Who Make Oath Can Allege to Avoid Punishment, Although They Do Not Keep Their Oaths.

Kings should cause justice to increase, and not to diminish in their dominions, and, for this reason, if the king should swear to something which may result in injury and loss to the kingdom he is not obliged to keep such an oath. We decree that the same rule applies to bishops and other prelates who swear to something which may result in serious injury to their churches, or to those localities where they are appointed as prelates. In addition to this, we decree, that where anyone enters into an agreement with another under oath, and the party with whom he made the contract violates it first, the former will not be guilty of perjury, even though he does not keep his oath; for it is not just that an agreement or an oath should be kept with him who broke it in the first place.

Nevertheless, we desire that all may be familiar with those cases in which, although one party does not keep his oath or refuses to do what he agreed to, the other cannot be excused if he manifests opposition. One of these is that of marriage; for, since a husband and a wife are sworn, although one may wrong the other by committing adultery, the latter has no right, for this reason, to take revenge in the same way, but is rather bound to observe what he, or she promised. The other case is that of a truce, for if one party grants it to another, and either of them breaks it by committing injury upon his movables or immovables—provided this is not done to the persons of men or women—the truce should still be kept by the other party to avoid violating his oath, except where, when the agreement was made, it was stated that if either of them should break it in any way the other should not be required to keep it; for it is not just where one party is guilty of treason or perfidy towards another that the latter should avenge himself upon him in the same way.

LAW XXIX.

How Many Excuses Those Who Take Oath Have to Avoid Being Liable for Perjury, Although They Do Not Observe What They Have Sworn To.

While we are undeceiving those who take oaths, we desire to inform them of some matters which we will mention in this law, in order that they may not incur the guilt of perjury against God, or be considered deceitful persons; and, for this reason, we decree that, if he who tenders an oath, or he who takes it, inserts into it a false or ambiguous word, it should not be understood except in the way that the party who was not guilty of deceit understands it. And, we decree that, if a fraud can be proved in an oath of this kind it shall not be binding; nor shall the party who committed, or stated the fraud, be benefited by it; nor can he, under such circumstances, avoid the guilt of perjury.

Moreover, we decree that he who swears to anything that is proper cannot avoid keeping his oath, even though he may state that he made it under compulsion, except in the following instances, to-wit; where a party is made to swear against his will that he will enter some religious order; or will marry some woman; or that he will give a dowry; or where persons take from him something belonging to the king or the Church, and compel him to swear that he will not claim it, or will not reveal who deprived him of it; for no one is obliged to keep an oath of this kind if he does not desire to do so.

TITLE XII.

Concerning the Interrogatories Which Judges Can Put to Parties in Court, After a Suit Has Been Begun by Complaint and Answer, and Which Are Called in Latin, Positiones.

Actions at law are begun by the complaints and answers made by parties in court, as we have previously shown. And for the reason that everything that man begins he should by all means endeavor to bring to completion in the easiest manner possible; we decree that judges should attempt, as soon as the case is begun before them by complaint and answer, to have all the parties sworn. And afterwards they should ask them, upon their oaths, to tell the truth, for in this way judges arrive at it more readily. And since in the preceding Title we have spoken of the oath, we now desire to speak here of these interrogatories; and first, to explain what an interrogatory is; what advantage is derived from it; who can put it; and concerning what matters.

LAW I.

What an Interrogatory Is.

An interrogatory is an inquiry which a judge makes to a party, in order to ascertain the truth of matters concerning which there is doubt or controversy in a case before him. Such interrogatories should be put after the suit has been begun by complaint and answer, and not before; except in certain special cases which we mentioned in the Title treating in the way in which a suit should be begun.

LAW II.

What Advantage Is Derived from an Interrogatory, Who Can Put It, and Concerning What Matters.

An interrogatory is something from which great advantage is derived, for by means of it a judge can more certainly ascertain the truth in the suits and doubtful matters which are brought before him. The judge can interrogate until he renders his decision, and one party can interrogate the other in the presence of the judge. The question should be of such a character as to be pertinent to the act, or relate to the property concerning which the controversy exists. It should be put positively and in few words, and should not contain many statements, so that the party who is interrogated may be able to understand them, and answer them positively; for where an interrogatory is put in any other way it should not be admitted, nor should the party to whom it is put be required to answer it.

TITLE XIII.

Concerning the Admissions and Answers by Parties in Court, to Claims and Interrogatories on Account of Them.

Parties sometimes make admissions concerning the property or acts about which interrogatories are put to them in court, so that no other proof or inquiry is necessary in the case. And since in the preceding Title we spoke of interrogatories, we desire to speak here of admissions and the answers arising from them, which is a kind of proof that is more certain and easy, and involves less labor and expense to the parties, than to introduce witnesses or documentary evidence to establish their claims. For this reason we desire, in the first place, to explain what an admission is; who can make it; what force it has; how many kinds there are; how they should be made; which are valid, and which are not.

LAW I.

What an Admission Is, and Who Can Make It.

An admission is an answer which one party makes to another in court, and every man who has reached the age of twenty-five years, or his attorney or advocate, to whom authority has been granted to do so, can make it. If, however, an attorney admits something in court, and his principal is present and subsequently contradicts him, he should not be prevented from doing so. But if he is not present, when his attorney makes the admission, and afterwards desires to revoke it he cannot do so; except when he says that he desires to prove that his attorney made the said admission through mistake or fraud, and that the truth is different from what he admitted; for, where he proves this before final judgment has been rendered in the case, neither the admission nor the answer made in this way by his attorney can embarrass him in any way.

We also decree that an admission made in court by a minor under fourteen years of age, his guardian not being present, shall be of no disadvantage to him, but if his guardian was present, and did not manifest any opposition, the admission shall be valid. Where, however, the admission resulted in great injury to the minor, he can revoke it, asking the permission of the king or the judge before whom it was made, and representing the wrong which he will sustain if the case should not be placed in the same condition in which it was before the admission was made; and if the king or the judge thinks that the admission will result in serious damage to the minor, it should be annulled. We decree that this same indulgence shall be shown to all persons who are under twenty-five years of age, who, together with their property are under the control of others, and also to such as are of age, if they are insane, or have lost their minds, or are spendthrifts, when their guardians admit anything in court which may cause them serious injury.

LAW II.

What Force an Admission Has.

An admission made by a party in court has great force where his adversary is present, for, by means of it, the case can be decided just as if what was admitted had been proved by reliable witnesses or genuine documents.¹ For this reason the judge before whom the admission is made should at once render a final decision in the case, if the action concerning the matter in which admission was made had previously been begun by complaint and

¹ "*Confessio, facta in judicio, omni probatione major est.*"—Ed.

answer. We decree that the same rule shall apply where admissions are made in court in a criminal case in any manner whatsoever. But where a party compels his debtor to appear before a judge, and requests that he cause him to be sworn, or that he ask him whether he owes said party any property, or any maravedis, and the defendant answers, at once and positively, that he does owe him, not desiring to make any contest in the matter; then we decree that it will be sufficient for the judge to order the debtor who made the admission to pay whatever he acknowledged to be due, within a certain time which he may designate, as we previously stated in the Title treating of Claims, and there is no reason why he should render a final judgment in favor of the other party in a matter of this kind.

LAW III.

How Many Kinds of Admissions There Are, and How They Should Be Made.

There are three different kinds of admissions. The first is, the one which a man makes in court while his adversary is present, which we mentioned in the preceding law. The second is, that which one man makes to another, without compulsion, not being present in court with him. The third is, when any person, through torture or violence done to him, confesses anything. Each one of these we shall explain clearly in the laws of this Title. We, however, desire to show here how those who are interrogated in court should answer positively, interrogatories put to them, admitting or denying, without equivocation, whatever they are asked; and if the person interrogated should say that he is in doubt, and asks time to remember, in order to answer with more certainty, and does this at his own instance, and not by the advice of his advocate, the judge should grant him time so that he can consider how to answer. But where he is willing to answer at once, and his advocate intervenes and asks time, it should not be granted him, for the reason that we may suspect that the advocate desires to give advice secretly to the party to answer in such a way as not to injure his case, and that the truth may be concealed; and therefore the judge should be careful, while he interrogates the parties, not to permit the advocate of the persons whom he interrogates to be present; for it happens frequently that advocates, through the great desire which they have to gain a suit, do not consider either God or their souls, and knowingly cause parties to deny the truth of the matters concerning which the interrogatories are put. Moreover, we decree that where anyone is interrogated by a judge about some matters relating to the suit, and he proves contumacious, and refuses to answer the question; his obstinacy in not being willing to answer will be of as great disadvantage to him as if he had admitted the matter concerning which the interrogatory was put. We decree that the same rule shall be observed in the case of a person to whom questions are put, and who answers equivocally, so that from his answer what is asked cannot positively be ascertained.

LAW IV.

How an Admission Should Be Made in Court in Order to Be Valid.

An admission made in court must include many things in order to be prejudicial to him who makes it, and advantageous to his adversary, and these are the following, namely: he who would make the admission should be of age, as we have explained above; and should make it willingly, and not from compulsion, and knowingly, and not by mistake; and should make it to his own disadvantage, for, where he admits anything which may benefit him, it will not

be disadvantageous to his opponent if he does not prove it.¹ Moreover, positive statements should be made concerning property, or a quantity of anything, or an act; and the admission made by a party should not be contrary to nature, or opposed to the laws of this our book; and, above all, it should be made in court, while the adversary of the party, or his attorney, is present. We decree that an admission, to be valid, should include all these things, and, where any of them is lacking, that no injury shall result to the party who made it.

LAW V.

A Confession Made Through Compulsion or by Mistake, Will Not Be Valid, and Within What Time It Can Be Revoked.

Men sometimes influenced by torture, or wounds, or the fear of death, or by the disgrace which they desire to inflict upon others, confess things, which they would not, of their own accord, acknowledge. For which reason we decree that a confession made in any of these ways, shall not be valid, or be a hindrance to any one who makes it. But if a party who has been interrogated, afterwards of his own free will, confesses the same thing which he acknowledged when he was subjected to force, and adheres by that confession without the further application of torture, or any threat of it made to him; his confession will be valid just as if he had made it without any compulsion. We also decree that, if any person makes an admission or denial concerning any matter or any act, through an error of judgment, it will be no disadvantage to him who made it, if he can prove the mistake before final judgment has been rendered in the case; for afterwards he cannot correct it, except for the reasons which we have given in the Title concerning Judgments, and also in the one concerning Defendants, in the laws treating of this subject. This would be the case where a person mentioned in the will as the heir of another is afterwards sued by someone else, he stating that in the will in which the said person is mentioned as an heir, the testator had bequeathed to him some portion of the property, and he thinking that this was the case, had acknowledged it to him, and, after the will had been opened, it was found that the property had not been bequeathed to him; and if a mistake of this kind, or another similar to it, is exposed before final judgment is rendered in the case, we decree that an admission made in this manner shall be revoked, and will not be valid.

We also decree that, where a suit is brought against such an heir on account of any property or debt which it is said that he who appointed him an heir owed; and the latter thinking that this was true, for the reason that the plaintiff was not a suspected person, or because of papers which he showed him, acknowledges the claim, and afterwards he can prove that the testator had delivered the property or paid the debt for which the said heir is sued, before judgment was rendered in the case; an admission of this kind, or any other similar to it, will be of no disadvantage to the party who made it. We, moreover, decree that if any person should confess in the presence of a judge that he had killed a man who is still alive, or one who had died of illness, or who died a natural death without any wound having been given him, or if he should confess that he had struck some person who had not been struck or wounded; such a confession will not be valid, for the reason that it seems to have been made by mistake, or through manifest insanity.

Where, however, a man has been wounded, or killed, and a party comes and confesses before a judge that he wounded or killed him, even when he was not in reality responsible for his death, either through his act, his order, or his

¹ *Of. the common law rule against self-serving declarations.*

advice; such a confession will be as injurious to him as if he had committed the act, because he knowingly acknowledged himself to be guilty of a crime committed by another, and favors that other party more than he does himself; and even though he may, afterwards, desire to prove that some one else and not himself committed the act, he shall not be permitted to do so.

LAW VI.

Where an Admission Is Not Positive, or is Contrary to Nature, or is Opposed to the Laws of This Our Book, It Will Not Be Valid.

Where a party questioned in court acknowledges that he owes money or property which is not definitely described, an admission of this kind will not be to his prejudice. This would be the case where one party sues another for a hundred maravedis which he lent him, and the defendant answers that he owes him some maravedis, but does not state the exact amount; or where he is sued for some specified property, as, for instance, a field, or a vineyard situated in a certain place, and the defendant answers that he owes him a vineyard, or a field, but does not mention the one which was indicated; an admission of this kind, or any other like it, will not be to his injury. The judge, however, should compel him to answer definitely how many maravedis he owes, or what field or vineyard he acknowledged to be due, and we declare that this applies to all other admissions like these. We also decree that, where anyone makes an admission in court which is contrary to nature, it is of no disadvantage to him, and will not be valid; and this would happen, where any one admits that some person older than he is his son or grandson; for an admission of this kind will not be valid, since, according to nature, a father must be older than his son. We also decree that if anyone admits he did something which, in fact, he could not do, such an admission will not be to his prejudice; and this would be the case where a boy confesses that he had committed adultery when he was not old enough to do so; or where a grown man confesses this, and there was no one with whom he could have performed the act.

We also decree that if anyone who is actually free, voluntarily admits in the presence of a judge, and when there was no dispute, that he is a slave, and no proceedings have been instituted in court, by anyone who brought suit on account of slavery, an admission of this kind is of no disadvantage to him who makes it, nor will it be valid; but where anyone claims him in court, stating that he is his slave, and the other party, without any compulsion, voluntarily acknowledges it, in an instance of this kind we decree that such an admission will prejudice him who makes it. If, however, before a decision has been rendered in the case, the party should prove, by genuine documents or by reliable witnesses, that he is free, an admission of this kind will be of no disadvantage to him, for the reason that it would appear that he made it through mistake.

Moreover, we decree that an admission made contrary to the laws of this our book shall not be valid. This would be the case where some Christian admitted in court that he was the slave of a Moor or a Jew, admits that he had married a Jewess; for admissions of this kind are of no disadvantage to him who makes them, because they are contrary to the prohibition of the laws of this our book, as we have shown in the Titles treating of this subject. We also decree that where any one publicly marries a woman, and either of the parties afterwards admits anything in court for the purpose of annulling the marriage, such an admission will cause no embarrassment, unless it is proved by witnesses, or in some other way.

LAW VII.**A Confession Made Out of Court Will Not Be Valid.**

Where a man acknowledges out of court that he has committed some offense or injury against another, and afterwards when he is called to account for it in court, denies that he ever committed the said offense; we decree that, if it cannot be proved in any other way, the confession which he made shall not cause him any damage, although he may be liable to great suspicion on account of the words or act which he thus acknowledged. We also decree that where any persons acknowledge out of court that they should pay maravedis, or anything else, to another party, and do not specify any reason why they should pay what they admit they owe, an admission of this kind shall not be a source of embarrassment to those who make it, nor shall they be bound to pay such a debt, if they do not desire to do so; except where the party to whom they made the admission gives some good reason for which they should pay him. But where anyone admits the amount of said debt, or describes the property which he should surrender, and the reason why he owes it, by saying: "I admit that I owe So-and-So so many maravedis which he lent me, or such-and-such a piece of property which he gave in my charge;" or states in his admission any other lawful reason, the other party, or his attorney, being present; in such an instance we decree that the admission shall be valid, and the party be required to pay what he acknowledges to be due, except where he may desire to prove by a genuine document, or by reliable witnesses, that he had previously paid the debt, or surrendered the property which he admits that he owed, and that those who had authority to do so, of their own accord, absolved him from all further obligations, and made an agreement that they would never demand the debt of him, or acknowledge and admit that it had been paid to them. For, having proved any of these things, we decree that he shall be discharged from all liability for said debt, or for the property which he admitted to be due; as we show in the Title concerning Witnesses, in the laws which treat of this subject.

TITLE XIV.

On the Evidence and the Presumptions Which Men Produce in Court Concerning Matters Which Are Denied and Doubtful.

Judges ask questions of parties in court to ascertain the truth in a case, and, although they place them under compulsion by means of an oath, such is the wickedness of certain men that, thinking to evade the claims brought against them, they deny their genuineness. For which reason, since in the preceding Title we treated of Admissions, we desire here to speak of the evidence which men produce in court concerning matters which are denied. We shall show, in the first place, what evidence is; who ought to give it, and to whom, concerning what matters it should be given and how many kinds of evidence there are.

LAW I.

What Evidence Is, and Who Can Give It.

Evidence is proof made in court concerning something which is doubtful. And proof naturally belongs to the plaintiff when the other party denies the claim, or the property, or the act, in the questions put to him; for, where the case is not made out, the defendant should be discharged from all liability concerning what is not proved against him, and the party is not required to prove what he denies, for the reason that he cannot do so easily; as, for instance, where it is something that cannot be established, or demonstrated according to nature.¹ Moreover, matters which are denied in court, should not be, and cannot be proved, except in the ways which we shall state hereafter in the laws of this Title.

LAW II.

A Party Is Not Required to Prove What He Denies, Except in Particular Cases.

It is an established rule of law that a party who denies anything in court, is not bound to prove it, as is stated above; but there are certain matters concerning which the party who denies them is required to produce evidence. This would be the case when anyone alleges and states in court, in the presence of his adversary, that he cannot act as advocate; or, opposing someone who introduced as a witness, states that he cannot be one; or alleges that he who hears the case should not be his judge, for the reason that the law, or justice forbids it. For in the case of denials of this kind, or others similar to them, the party alleging anything against another is required to prove it by producing a law, or calling attention to the right which forbids the party against whom he makes the allegation to be advocate, witness, or judge, as well as the act which he committed, or the reason for which he cannot be such; and the other party, against whom this kind of a protest is made, is not required to prove that he is such a man as can be accepted in court in the capacity which affects the matter in dispute, because such a protest does not include an absolute denial, but is masked by the act which it is said the party against whom the allegation is made committed, and for which reason he is disqualified from being an advocate, witness, or judge. Moreover, he who

¹ It is the rule of the civil law and of all modern systems derived from it that the *onus probandi* rests upon the plaintiff. "*Ei incumbit probatio qui dicit, non qui negat.*" This principle of action based upon common sense and the knowledge that it is much the easier to prove an affirmative is, as is well known, that of the English and American procedure. The plaintiff could not, according to either the Roman or common law practice, avoid disclosing the whole of his case, and suppress any material testimony not in his favor.—Ed.

makes this protest alleges in his own behalf both law and justice, and therefore he must establish and prove it.

We also decree that when anyone brings suit in court for real estate, or a bequest, or any other property that some person has left him by will, and in order to prove this, produces a valid will or bequest, and the other party answers that the will should not be admitted, because the testator, at the time when he executed it, was not of sound mind; he who makes an allegation of this kind is required to prove it, although he puts his statement in the form of a denial. The wise men of the ancients approved of this for the following reason; because they presumed that a man was of sound mind until the contrary was proved; and therefore we decree that if a party denies that he who made a will was not of sound mind at the time he did so, and is not able to prove this, the will shall be considered valid since he offers no other objection to it; although the party who desires to be benefited by the said will may not produce any evidence concerning the sanity of the testator.¹

Moreover, we decree that when a man dies, and money, clothing, and other property are found in possession of his wife, who ordinarily lived with him; and the heirs sue for said property in the name of the deceased; and the wife denies in court that it belonged to her husband, and claims it as her own; or declares that she has some right in it, she is required to prove this, and if she cannot do so by competent evidence, all said property should be delivered to the heirs of the deceased. The wise men of the ancients approved of this for the following reason, namely; because they presumed that everything found in possession of a wife was a part of the property of her husband, until she showed the contrary; since it was more reasonable to suppose this than to excite a suspicion in the hearts of men that she had obtained the property in an improper way.

This should be understood to refer to such women as do not practice any art or trade by which they can earn money honestly, but, where they are engaged in such employments, we consider it just that they should not be deprived of any property which they state they have obtained in this manner; and their allegations and those of the heirs should be heard in the way ordered by the other laws of this our book which treat of this subject.

LAW III.

When a Father Leaves His Children by His Will More of the Income of Property Than the Laws of This Our Book Authorize.

A father has such great love for his son, although he may be illegitimate, that he may seek ways to leave him more by his will, than the laws of this our book authorize. This would be the case when anyone left a son of this kind as much as the law states that he can leave him, and, in the same will, directed his heirs to pay to his said son as many maravedis as a certain individual, a relative of the boy, had secretly given him to keep for the latter, and also to pay to him as many maravedis as the said testator was entitled to receive from the income of a certain piece of property belonging to the boy or to his mother; or ordered other words, similar to these, to be inserted into his will, by which he directed more to be given to the boy than is authorized by the laws; we hereby decree that the heirs are not bound to pay more than the law of this our book states that a father can leave to such a son, and whatever he mentioned in excess of said amount shall not be received as true.

¹ This presumption—as well as others relating to illegitimacy, infancy, death, and similar conditions—is, of course, that accepted by the law to-day. The proof of a will, where the sanity of the testator is in dispute, is a case in point, the question determining the assumption of the *onus probandi* under such circumstances being who would be entitled to a judgment if no testimony was introduced.—Ed.

For the wise men of the ancients who made the laws, presumed that when a father made use of words of this description, he did so to evade the law, and from a desire which he had to do something for his son, and not for the reason that it was proper. If, however, such a son can prove that his father owed him or received from him any of the property which he directed to be delivered to him, then the heirs will be bound to deliver it, and to grant him all that he proves or establishes in this way.

LAW IV.

When Any of the Parties Alleges in Court That His Adversary Is a Minor, and the Others Says That He Is of Age, Which of Them Should Prove This.

Where a minor desires to withdraw from the control of his guardian, because he states that he is of full age, and his guardian opposes this, alleging that he is a minor, the latter is bound to show that he is of age in order to be released from the control of his guardian and obtain possession of his property. We decree that the same rule shall apply where guardians petition a judge to remove a minor from their houses and their control, stating that he is of age; for if the minor, or anyone acting for him, disputes this, the guardians are required to prove it.

We also decree that where anyone desires to set aside or annul a sale, or any other contract or agreement whatsoever, which he has entered into with another party, alleging that at the time he made it he was a minor, and that said contract resulted in his injury, or that he was defrauded by means of it; and the other party answers that this is not true, but that, at the time when he entered into said contract, he was of full age; he who desires to abrogate said contract is required to prove two things; first, that he was a minor at the time that he made it; second, that great injury or fraud has resulted to him from it; for where these two things cannot be proved the contract must not be set aside.

LAW V.

When One of the Parties Alleges in Court That His Opponent Is a Slave, and the Other Answers That He Is Free, Which One Should Introduce Proof.

A dispute sometimes arises between a plaintiff and a defendant, one of them alleging in court that his opponent is a slave, and the other declaring that this is not true, but that he is free. And for the reason that judges may doubt as to which of them should introduce proof, we desire to settle the matter here; and we decree that when anyone goes about as a freeman, and the other claims him in court, stating that he is his slave; and the former says that this is not true, but that he is free; the party who makes the claim must prove his case, and not the other who is in possession of his liberty, if the latter does not desire to do so. But where the party who states that he is free, is in the power of his master as a slave, and institutes proceedings against him in court, alleging that he is free, and his master answers that he is his slave; in a case of this kind, we decree if the master produces a document, bill of sale, or any other evidence by which it can be ascertained that he, in good faith and not through violence or fraud, obtained control of the party whom he says is his slave, he who asserts that he is free must prove it, and show that the other party obtained possession of him either by force or fraud. If he is unable to show or establish either of these facts, he must remain in the power of his master as a slave, since the latter has shown a lawful reason for having control of him.

LAW VI.**When One Party Makes Payment to Another and Says, After He Has Done So, That He Did It by Mistake and Did Not Owe Him, Which One Is Bound to Prove It.**

Men sometimes make payments of money, or other property, and afterwards petition in court that what they paid be returned to them; stating that, through mistake, they had paid debts that they did not owe, and those against whom this claim is set up, answer that the debt for which the payment was made to them was a just one; and, because doubt may arise as to which one of these is required to prove his statements, we intend to decide it here. We decree that he who gave or paid something to another party, by mistake, and when he did not owe it, is bound to prove this for the following reason, namely: because the wise men of the ancients presumed that no one is so imprudent as to be willing to surrender his property, by giving it to another to whom he is not indebted.

Where, however, he who states that he paid the other party what he did not owe him, is a knight who is constantly engaged in the service of the king or of some other great lord, employing himself with deeds of arms or of knight-hood; or a common laborer, who resides in some hamlet and is not familiar with the fuero; or a boy under fourteen years of age; or a woman; none of these persons will be required to prove what he says in the above mentioned case, but his opponent, who received payment from him, must show that what he received from any of the persons aforesaid was paid to him for the reason that he really owed it. If he should not be able to do this, he must return the property that was given him to the party who gave it; for we may presume that the former ought not to have received it, since a knight should be more familiar with deeds of arms than with shrewd or intricate transactions, and this applies to the other persons mentioned above, for the reason that they are easily deceived, and therefore err by paying what they do not owe.

We also decree that if a man or woman receives a sum of maravedis, or other property from any person, and, afterwards a demand is made upon them in court to return what they received because by mistake they were paid what was not owing to them; and he who received it denies it altogether, saying that the transaction never took place, and the other party is able to prove and establish that it did, even though he may not show that it was done through mistake, and something was paid which was not due, the party who made the payment is required to do one of two things: either to return to his adversary what he proved he gave him; or to establish by competent evidence that the other party really owed the property with which payment was made.

LAW VII.**To Whom, and With Reference to What Matters, Proof Should Be Made.**

The establishment of proof, of every description whatsoever, should be made before, and presented to, the judge in whose court the suit is to be heard, and not to the party against whom the evidence is introduced; although this should be done while he is there present, and he should be given a transcript of it, if he asks for it. We also decree that evidence shall be introduced with regard to such matters as can be determined by judgment, as, for instance, movables or immovables; or questions involving liberty or servitude; or tenancy or ownership, or penalties, or offices, or honors; or concerning the guardians of minors or of other persons on account of offences or for any other cause whatsoever, because of which proceedings may be instituted in court for

their punishment. Evidence on points or arguments of philosophy should not be admitted, for the reason that controversies of this kind cannot be decided by law, or in court, but only through the learning of those who endeavor to become familiar with and decide such things.

We also decree that only such evidence as relates to the principal controversy concerning which the suit is brought should be admitted in court, for a judge ought not to permit parties to waste their time by proving matters which they cannot afterwards take advantage of, even though they should establish them by evidence.

LAW VIII.

How Many Kinds of Evidence There Are.

Proofs and verifications by which men prove their propositions are of many kinds, and they are the following, namely: an acknowledgment and admission which a party makes against himself in and out of court, in the way we have shown above in the laws treating of this subject; or one made by witnesses who state facts from memory, and who are such that by reason of their persons cannot be rejected; or documents drawn up by the hand of a notary public; or any other matter whatsoever which should be believed, and is competent, as is explained fully in the laws under their several Titles. There is also another kind of evidence called presumption, which means strong probability, and which is worth as much in some cases as the establishment of proof. And although King Solomon rendered his decision solely through presumption in a controversy concerning a son which had arisen between a free woman and one who was a slave, yet, in every instance, evidence based upon signs and presumption only should not be sufficient, except where ordered by the laws of this our book; for the reason that presumptions very often do not agree with the truth.

There is still another kind of proof, as, for instance, that of inspection by a judge, and his examination of the property which is the subject of controversy, and this would be the case where parties have a dispute in court concerning the boundaries of towns or of other places; and also, where a suit is brought on account of some woman who is said to have been seduced, or concerning one declared to be pregnant by her husband; for controversies of this kind should be decided by an examination by women of good reputation. There is other evidence which is given by common report, or by rights which the parties establish in court to prove and gain their suits, as we shall show hereafter.

There is another kind of proof which was formerly practiced, and is still in use today; as, for instance, that derived from a contest of knights or of foot soldiers, and which originates in a challenge, or in some other way; and although this is customary in some countries the wise men who made our laws did not consider it legal evidence. This is so for two reasons; first, because it happens many times in such contests that truth loses, and falsehood is victorious; second, because he who is willing to risk himself in a trial of this description, seems desirous of tempting Our Lord God, which is something He forbade by His word when He said: "Get thee behind me Satan, thou shalt not tempt the Lord thy God."

LAW IX.

Where a Woman Says That She Was Not Pregnant by Her Husband but by Some Other Man, Such a Statement Does Not Give Rise to Any Evil Presumption, Which May Affect Her Unborn Child, So as to Result in Any Way to Its Prejudice.

Women sometimes become so greatly enraged that, through the anger which they entertain against their husbands, they declare that their unborn children, or those who are already born, do not belong to their husbands, but to others. In an instance of this kind we decree that, when it can be proved by the neighbors of the locality where the child of any woman who made statements like that aforesaid was born of her while she was married to the said husband, and he was not separated from her for so long a time that it could be truly presumed, according to nature, that her child belonged to another man; the said child should not be disinherited, or its rights prejudiced in any way by speeches of this kind uttered by either its father or its mother.

LAW X.

Where He Who Proves in Court That, at a Certain Time, He Was the Owner or Possessor of Property Concerning Which a Controversy Exists, He Should Be Presumed to Be So Still, as Long as the Contrary Is Not Proved.

Where one man sues another for a house, a vineyard, or any other kind of personal or real property, stating that it is his, and the defendant, who is in possession, denies this; it will be sufficient for the plaintiff to be able to prove that the property was his own, or that of his father or his grandfather, or of the person whose heir he is, so that, by evidence of this kind, the said property should be delivered to him. This is the case because the wise men of the ancients presumed that every man who, at any time, was the owner of property is so still, until the contrary be proved.

We also decree that, where a man is the possessor of property either personal or real, and afterwards a demand is made upon him for it, and he, not wishing to be involved in a lawsuit, answers that he was not the holder of said property at the time the demand was made; in an instance of this kind we decree that the defendant should not be compelled to answer concerning said property; although at some time or other it may have been in his possession; except where it was proved that he fraudulently abandoned or renounced the possession of said property, in order that it might not be demanded of him; or where he had obtained possession of it by violence, robbery, or fraud; for, under these circumstances, he would be required to answer the demand made for said property, just as if he were in possession of it; as we show in the laws of this our book which treat of this subject. But if he who proved that he was at one time the possessor of the property in dispute, should allege and admit that it is now in his possession, we must undoubtedly presume that it is so still, until the other party, who disputes said possession, establishes the contrary.

We also decree that, where a man, at any time, had under his control certain property as a pledge, or for the reason that it was loaned to him or given in his charge; it should always be presumed that he still holds it—although he may deny this in court—until he proves that he returned or delivered it to the party from whom he received it, or that he disposed of it by his orders, or that he lost it through theft, violence, robbery, or some other accident. For, where any of these things are proved a party is not bound to pay for the property lost

in this way, except where the plaintiff can prove that this was done through the fault or fraud of the defendant; as in a case of this kind we declare that the party against whom this has been proved, will be bound to pay for the property lost in this manner, as we have shown in the laws of this our book which treat of this subject.

LAW XI.

It Should Be Presumed That an Heir Can Profit by a Contract or Agreement Entered Into by One Man with Another, Although He May Not Be Mentioned in It.

Where a man makes an agreement with his debtor promising him that he will never ask him for the debt which he owes; and, afterwards, the party with whom such an agreement was made dies, and his heirs are sued for the said debt, and answer that they are not bound to pay it because a contract had been made with the party whose heirs they are that it should never be asked of him, and the other party admits that it is true that he had entered into such an agreement, desiring solely to do a personal favor to his debtor, and that the heirs of the latter could not profit by any such contract because none of them were mentioned therein; in an instance of this kind we decree that an heir can take advantage of such a contract, or any other similar to it, although no mention of any heir was made in it; for the reason that the wise men of the ancients presumed that every man who makes a contract or an agreement with another, does so as well for his heirs as for himself, even though they are not mentioned in the said agreement. If, however, he who made the contract or agreement can prove that no mention was made of the heir in the same in order that he might not benefit by it thereafter, but solely as a favor to the debtor by not asserting the claim against him in his lifetime; under such circumstances an heir cannot derive any advantage from such a contract as this and will be bound to pay the debt, since he could not defend himself by any other lawful means.¹

¹ Most of these belong to the class of disputable presumptions, the *praesumptio juris* of the civil law. By the common law, likewise, the possession of any kind of property carried with it the presumption that the title was vested in the party occupying or holding the same. *Praesumptio violenta valet in lege*. It will be noticed that the rules in Laws VII-VIII-IX-X are, for the most part, those governing modern judicial procedure. Where two persons died together as the result of an accident, by the civil law, if one of them had not reached the age of puberty he was presumed to have perished first, otherwise not. This is also the rule in France, which fixes this age limit at fifteen and sixty, and directs that the circumstances of the case must, as far as possible, be taken into consideration. If the parties are of different sexes, the male is declared the survivor when the ages are equal, or there is difference of only a year.

Si plusieurs personnes respectivement appelées à la succession l'une de l'autre, périssent dans un même événement, sans qu'on puisse reconnaître laquelle est décédée la première, la présomption de survie est déterminée par les circonstances du fait, et, à leur défaut, par la force de l'âge ou du sexe.

Si ceux qui ont péri ensemble avaient moins de quinze ans, le plus âgé sera présumé avoir survécu.

S'ils étaient tous au-dessus de soixante ans, le moins âgé sera présumé avoir survécu.

Si les uns avaient moins de quinze ans et les autres plus de soixante, les premiers seront présumés avoir survécu.

Si ceux qui ont péri ensemble avaient quinze ans accomplis et moins de soixante, le mâle est toujours présumé avoir survécu, lorsqu'il y a égalité d'âge, ou si la différence qui existe n'excède pas une année.

S'ils étaient du même sexe, la présomption de survie, qui donne ouverture à la succession dans l'ordre de la nature, doit être admise: ainsi le plus jeune est présumé avoir survécu au plus âgé. (Cod. Civ. de Fr. III-1-1-ART. 720, 721, 722.)

This has been adopted verbatim by the Louisiana Code, (Civ. Cod. of La. Art. 930-933).

Another doctrine prevails in Spain and Italy, where the rule established in the Stanwix case by the English courts is in force. "*Si se duda, entre dos ó más personas llamadas á suceder, quién de ellas ha muerto primero, el que sostenga la muerte anterior de una ó de otra, debe probarla; á falta de prueba, se presumen muertas al mismo tiempo y no tiene lugar la transmisión de derechos de uno á otro.*" (Cód. Civ. de Esp. II-1-33.)

"*In mancanza di prova presumono morti tutti ad un tempo, e non ha luogo trasmissione di diritto dall'uno all'altro.*" (Cod. Civ. d'Italia, III-1-924.) The Mohammedan law of inheritance agrees with this, which is substantially the rule in the United States.—Ed.

LAW XII.

A Criminal Case Cannot Be Proved by Presumptions, Except in Particular Cases.

A criminal prosecution instituted against anyone by accusation or impeachment, should be proved publicly by witnesses, by documentary evidence, or by confession of the party accused, and not solely by presumptions. For it is but just that a proceeding instituted against the person of a man, or against his reputation, should be proved and established by evidence as clear as light, and in which no doubt whatever may arise. Wherefore the wise men of the ancients, held and stated that, in a case of this kind, it is a far more sacred thing to acquit a guilty man, against whom a judge could not obtain positive and plain evidence, than to find one guilty who is innocent, although from certain indications, a presumption might arise against him.¹ There are particular instances, however, in which a criminal accusation may be proved by presumptions, although it cannot be established by other evidence. This would occur when anyone suspects another of wronging him, or desiring to wrong him through his wife, and notifies him three times by means of a notice drawn up by the hand of a notary public, and in the presence of witnesses, telling him to avoid associating with her, and warning his wife to avoid speaking with the said man. And if, afterwards, he should find him with her in his own house, or in that of his wife, or in that of the other party who may wish to dishonor him; or in a garden or in a house outside the town, or in one in the suburbs; he can kill the said party without any liability to punishment; although he may not be able to prove that he had committed any offence with her. This he can do solely for the following reason, namely; that after the insult he found them talking together; but if he should find them talking by themselves in the church, after the notice he had given as aforesaid, the husband can arrest both of them, and deliver them to the superior of the church or to the clergy who may be there, to keep them in custody and separate from one another, until the arrival of the judge who can demand them of the bishop and take charge of them, in order to inflict upon them the punishment which they deserve, as the laws of this our book, which treat of adultery, direct.

We also decree that where any person finds them together in any other place, the husband should at once confront them with three witnesses who will testify that they saw them talking together, and he should arrest them and deliver them to the judge of the district, and the judge may and should inflict upon them the penalty of adultery, although the husband did not introduce any other evidence or proof against them, except only this presumption that he found them talking together after he had given them the above-mentioned warning. We also decree that when any person is accused of committing adultery with some woman, and he, in order to defend himself, tells a judge that she was such a near relative of his that no man ought to suspect that he would commit such an offence with her; in an instance of this kind the judge, where the said relationship was established, and he thinks that the party is telling the truth, should discharge him; and if the said party should subsequently keep her as his concubine, or marry her after her husband's death, we decree that by reason of a presumption of this kind, sentence can be pronounced against him just as if the adultery had been proved at the time when he was accused. The case would be the same where a judge corruptly acquits a culprit of the accusation of adultery made against him; or he escapes from prison where he was confined on this account, if afterwards it should be positively ascertained that he had kept said woman as a concubine, or had married her.

¹ See *U. S. v. Navarro*, 3 *Philippina*, 163, per Mapa, J. C. S. L.

LAW XIII.**What Cases Cannot Be Decided by Evidence, Unless the Judge Inspects the Property with Regard to Which It Is Introduced.**

Controversies and suits arise among men which are of such a character that they cannot be decided by the testimony of witnesses, or by documentary evidence, or by presumption, unless the judge inspects beforehand the property concerning which the said controversy or suit originated. This would be the case when a suit is brought before him involving the boundaries of a certain locality; or on account of some tower or house which the judge was requested to demolish for the reason that it was about to fall; and where anyone makes complaint before him that some other party has caused him great bodily dishonor, which dishonor was so serious that it could not be proved by witnesses alone without the judge seeing what was the nature of the said dishonor, and on what part of the body it had been committed; for in any of these cases a judge should not consider the charge as established without, in the first place, seeing what was the nature of the act concerning which he had to render his decision, and in what way he could the better and more justly decide.

LAW XIV.**How Evidence Should Be Given When a Doubt Arises as to Whether a Man, Who Resides in Another Country, Is Dead or Alive.**

Doubt can easily arise as to whether men who travel in foreign countries are living or dead, on account of which their relatives may have disputes concerning their property, some alleging that they are more nearly related to the party who is dead and should inherit his property, and others who contradict this declaring that he is still alive; wherefore we desire to state here in what way a judge should receive evidence in a controversy of this kind. We decree that, if it should be said that the party whose death is in doubt died in a foreign and distant country, and a long time has elapsed, as, for instance, more than ten years, this shall be sufficient if it be proved that this is the common report among the people of that locality, and that all declare publicly that the party is dead.¹ For a man could not easily produce witnesses to establish a fact which had happened in such a distant country and after so long a time, and especially to prove that persons had seen the party dead or buried; but where they allege that he whom they say is dead died but a short time before, as, for instance, within five years, or in a country in which the truth could be easily established and ascertained, then his death must be proved by witnesses who saw him either dead or buried, and it will not be sufficient to prove it solely by rumor.

LAW XV.**How Cases Can Be Proved by Law and Fuero.**

Cases in court, and controversies existing between men can not only be proved by admissions, by witnesses, by genuine documentary evidence, by grants, by public records, by presumption, or by common report, as we have above stated, but by a law or a fuero which determines the case respecting

¹The presumption of death, after the continuous absence of a party for thirty years, becomes conclusive by the provisions of the French, Spanish, and Italian Codes, judicial proceedings to obtain temporary control of his property may be instituted by the heirs of anyone of whom no intelligence has been received, after two years in Spain; four years in France; and three years in Italy, when the absent person left no one in charge of his affairs. (Cod. Civ. de Fr. VIII-II Art. 184.) (Cod. Civ. de Esp. I-IV-2.) (Cod. Civ. d' It. I-III-2.)

By the common law seven years were required, which is still the rule in general. In Louisiana the time is five years.—Ed.

which there is a dispute. Wherefore we decree and order with regard to every law of this our book which any party may introduce before a judge to prove or establish his case that where his statements are proved by said law, they shall prevail and be carried out. And if he should introduce a law or a fuero of some other country outside our dominions, we order that in our country it shall have no weight as evidence, except in disputes arising between men of that country concerning some contract or agreement which they had entered into there, or some property, either personal or real, belonging to said country. For, under these circumstances, as foreigners may contest for the possession of such property before a judge in our dominions, so he can admit the evidence, the law, or the fuero of the said country which they introduce before him, and he should by means of it investigate and decide the case.

We also decree, that where a suit is brought concerning an agreement, contract or gift made, or a crime committed, within a period by which it was barred by ancient fuero; and this is done within the time of another new fuero opposed to the first, the case should be proved and decided in compliance with the ancient fuero, and not according to the new one. This rule prevails for the reason that the time in which acts are begun and completed should always be inquired into, although a suit concerning them may be brought at some other time.

TITLE XV.

On the Periods of Time Which Should Be Given by Judges to Parties in Court to Prove Their Cases.

We have shown sufficiently in detail, in the preceding Title, the evidence which parties should give in court. We intend now to speak here of the periods which judges should allow to parties to prove their claims in court, when they are denied; and we first desire to show what a term is; for what reasons it was established; who can grant it and in what way; to whom it can be granted; and how many times and for how long a period this can be done.

LAW I.

What a Term Is, and for What Reasons Terms Were Appointed.

A term is a period of time which a judge appoints within which parties are to answer or prove what is stated in court, when it has been denied. Terms were appointed for the following reasons, namely; in order that parties might seek advocates to advise them, or that they might have time in which to answer the complaint made against them, by admitting it, or contradicting and denying it if they think they can lawfully contest it; or in order to introduce in court witnesses, grants, or documents to prove his case or prosecute an appeal; or for the purpose of performing or carrying out anything else which the judge may order.

LAW II.

Who Can Appoint Terms, When They Should Be Appointed, and in What Way, and for Whom.

Judges should appoint a time for the parties to produce evidence when the statements made by them are denied, both of them being present, and the judge sitting in the place where he is accustomed to hear and decide cases. Not only should they be appointed for the plaintiff and the accuser, but also for the defendant and the person accused, if necessary, when they desire to prove some matter which is vital to their cases. We also decree that, so long as the term which the judge appoints for either of the parties lasts, he must do nothing further in the case, or employ himself with it, except with respect to the matter for which the term was appointed, as, for instance, to hear witnesses, or examine the documents or grants which are produced as evidence before him.

LAW III.

How Many Terms for the Introduction of Evidence Should Be Granted Parties in Court, and How Long a Time Should Be Appointed for Each of Them.

Each of the parties is entitled to three terms within which to introduce documents or witnesses to prove his case in court, where any property either personal or real is in question, and judges should not grant these according to their will, except when a lawful reason arises for doing so, as we explain in this law; for a party should have the first term without any opposition, but the second ought not to be given to the one asking it, if he does not prove at the time that he labored under some impediment on account of which he could not introduce or obtain the evidence by reason of which time was granted him. We declare that the same rule which we established for the second shall apply to the third term, but where a great necessity exists for it, the judge can ap-

point a fourth term for the introduction of testimony, the party having been first sworn, and having proved the existence of the impediments under which he labored, and on account of which he could not introduce testimony during the other preceding terms. In criminal cases, however, the accuser should be allowed two terms in which to prove his allegations, and the accused three without question, even when he does not ask for them, where the parties have been prevented from introducing their testimony ; but if they ask for more time it should not be given them, except to prove and establish the existence of impediments, as we stated above in this law, and for this purpose they should have as much time as is granted in the Title concerning Witnesses in the laws which treat of this subject.

TITLE XVI.

Concerning Witnesses.

We showed in the preceding Titles what investigations by means of evidence are, and how many kinds exist, and we also explained the terms which parties take in court to prove their cases. And for the reason that we referred there to witnesses in general, we intend to speak of them here particularly, and to show what witnesses are; what benefit is derived from them; who can introduce them into court; at what time they can do so; what kind of persons they should be; how they should be sworn; in what way their statements should be received; how many witnesses are sufficient to prove every case; how many terms the parties should have to introduce them into court; and we shall also show who has the power to compel them to come when they are unwilling to give their testimony; as well as how their evidence should be opened, and transcripts given to the parties; and all other matters pertaining to the character of witnesses.

LAW I.

What Witnesses Are, What Benefit Is Derived from Them, and Who Can Introduce Them Before a Judge.

Witnesses are men and women who are of such a character that their evidence, introduced by parties in court to prove matters which are denied or doubtful, cannot be dispensed with. Great advantages are derived from them, for the reason that the truth, which, under any other circumstances, would frequently be concealed, is ascertained through their testimony, and the party by whom the suit is begun, or his attorney, can introduce them into court if he thinks they are necessary and will assist him in his case; for no one should, himself, be compelled to introduce witnesses into court, except the *adelentado* of some country, or the judge of some district. For officials of this kind, as soon as their terms of office expire, should do justice to all those who have any complaint against them, and be compelled to bring into court the subordinate officials and other men who resided with them while they were in office, that they may give testimony concerning the acts which they performed, or occurrences that transpired while they were in public service; and in order that they may do justice to any persons of the country who have any complaint against them; and also because the offences of which such persons are guilty are done very secretly, and cannot be proved except by those who lived with them at the time when they were committed.

LAW II.

Witnesses Should Be Admitted After a Suit Has Been Begun by Complaint and Answer.

Witnesses should not be admitted before a suit has been begun by complaint and answer, except with respect to particular matters, which are of such a nature that, if they are not admitted before, the plaintiff or defendant may lose his rights. This would be the case when the witnesses by whom they desire to prove their cases are old or infirm, so that it may be feared that they will die before they have given their testimony; or where it happens that the witnesses are about to join the army, or go upon a pilgrimage, or somewhere else which will cause great delay, so that doubt may arise as to their return. In any of these instances the evidence of witnesses can be taken, although issue may not have been joined by answer. However, a judge whose duty it is to

hear such witnesses, should notify the party against whom they are to testify, if he is in the country, to come and be present when they are sworn, if he desires to do so. And if he does not desire to come, or is not in that neighborhood, the judge should not fail to allow them to be heard for that reason; but, in that case, he should cause them to be sworn in the presence of good men, have their testimony reduced to writing, and seal it with his seal, that their statements may be kept until the time when they are required.

We also decree that if the party against whom the witnesses testify was not at that time in the country, notice should be given him of this, provided he returns within the space of a year, or a suit is brought against him concerning the matter to which the witnesses testified, and if this should not be done until after a year has elapsed, the testimony of the witnesses which has been taken will not be competent, as above stated. But where the said witnesses are living, and the plaintiff wishes to introduce them into court to prove his case, the defendant cannot reject them, even though he may state that their testimony was already taken, and was not admissible, for the reason that he was not notified within a year, as previously stated. What we have set forth in this law concerning the admission of witnesses, before issue has been joined by answer, does not apply to a criminal case involving death, loss of limb, or banishment from the country; except where the king, by virtue of his office, orders an inquiry to be made concerning certain matters, as we shall show hereafter.

LAW III.

Witnesses Can Be Admitted in Suits Brought for Purposes of Investigation Though the Suit Has Not Been Begun by Complaint and Answer.

Witnesses can be admitted in another way, without issue being joined by answer, as we stated in the preceding law. We decree that this applies to every suit of general investigation, instituted by order of the king, as stated in the Title concerning Investigations, for under these circumstances, witnesses should be accepted at once, since they are not introduced either at the instance of the plaintiff or the defendant, but are called to ascertain from them the truth of matters which are doubtful, or of evil deeds which have been committed secretly, and by means of which certain persons have been rendered infamous. We decree that witnesses called in such cases should be sworn by those who take their testimony, and this oath should be administered to them before they give any part of their evidence; and we decree that this same rule shall apply to every other case in which persons appear as witnesses, that is that they should be sworn before their testimony is taken, as we shall show hereafter.

LAW IV.

There Is Still Another Way in Which Witnesses Can Be Admitted When Issue Has Not Been Joined by Answer.

Witnesses can be admitted in still another way when issue has not been joined by answer. This may occur when one person adopts another lawfully, as stated in the Title concerning Adoptions, and gives or promises him some real property, or agrees to give him a certain income or sum of money every year; or where he makes some other verbal contract with him concerning matters of this kind, or others similar to them, in the presence of witnesses; and the party to whom the property was given, or who proves any of the things we have mentioned above, in order to strengthen his case, and that no doubt may subsequently arise, petitions the king, or asks the official acting in his stead in that locality, or where the contract was made, to take the testimony of the

said witnesses; and in pursuance of this that a document be drawn up by the notary of the king, or his Council, according to the place where this occurred, in order that the matter may not be forgotten, then a request of this kind should be entertained. But, when the testimony of these witnesses is to be taken, notice should be given to him against whom they are to testify, or to his heirs, to be present at the hearing if they desire to do so, and the judge who takes their testimony should draw up a letter stating that the parties had been notified, and cause it to be included in the same record which contains the statements of the said witnesses, in order that, if the parties should deny that they had received notice, it can be proved that they did.

We also decree that if a decision was rendered without having been reduced to writing, and one of the parties is afraid that his statements may be changed or the terms of the judgment forgotten, and petitions the judge to hear the witnesses who were present when he rendered his decision, he must do so, and order the clerk of the council to draw up a memorandum of what they testified to concerning the matters in which judgment was rendered, and in what way they gave that testimony. We decree that the same rule shall apply when a request is made to the king to issue his letter for this purpose.

LAW V.

There Is Still Another Way in Which Witnesses Can Be Admitted Before the Suit Has Been Begun.

Before a suit has been begun, as above stated, witnesses can be heard with reference to an appeal taken according to law, as set forth in the Title concerning Appeals. They should, however, be admitted as follows, namely; where he who considers himself injured by what was ordered or decided against him in the case respecting which an appeal is to be asked from the judgment of those who heard it; and the appellants appeared at the time, and his adversary did not; and the former desires to call witnesses concerning this in the proceedings before the judge of the court of appeal, the testimony of witnesses should be taken.

We also decree that witnesses can be heard in another way before the suit has been begun; and this is where anyone, in his lifetime, by his will, directed his heir to enfranchise one of his slaves at his death, or merely says for him to do so, and the slave petitions the king, or asks the magistrate who has jurisdiction in the district where the said slave is, to cause the said heir to comply with the order of the deceased; he has the right to introduce witnesses to prove this before the suit is begun, and they should be heard, and their evidence will afterwards be competent, so far as the matter to which they testified is concerned.

LAW VI.

There Is Still Another Way in Which Witnesses May Be Admitted to Testify Before a Suit Is Begun.

Before a suit is begun, witnesses can be heard in the following way; for instance, when persons inform the king that those who govern the country for him, the magistrates, judges, and other persons whose duty it is to see that justice is done, or their subordinates, are appropriating his revenues, or collecting his taxes for themselves, and are issuing orders in the king's name, and oppressing the people of the country by making bad use of their office, or by employing violence against them, or committing other wrongs. If they introduce lawful witnesses to prove this, either before the king, or before anyone whom he orders to hear them, their testimony should be taken, and the king

should do in the matter whatever he thinks right. And we declare that there is another way yet in which the testimony of witnesses may be taken before a suit is begun, and this would be the case where anyone institutes proceedings against another causing him to be summoned, and the party who instituted said proceedings does not desire to prosecute the case, or to appear at the time which was appointed by him who was to hear it; and the defendant, fearing injury to himself and his heirs, has recourse to the king, or to whomsoever is to decide the case, and states that his witnesses should be heard, or that the case should be decided; then the plaintiff should be summoned, if he is there, or can be found, and a day appointed for him to come to prosecute the case, and if he is not in the country, notice should be served at his residence. And if, after all this, he does not appear, the witnesses should be heard and the case decided according as is found to be just, for one can certainly presume that, since his adversary ordered him to be summoned, and afterwards declined to prosecute the case, he acted maliciously.

LAW VII.

There Is Still Another Way in Which Witnesses Can Be Heard Before a Suit Is Begun.

Witnesses can be heard in another way, in addition to those we mentioned in the preceding law, before issue has been joined by answer. This would be the case when anyone interposes an objection to another, as, for instance, to the magistrate who is to determine the case, by a party stating that he considers him to be a suspected person, and giving some lawful reason why he should not answer before him; or where his adversary states, in opposing him, that he should not answer because the contract which he entered into with him was such that he could not claim what he brought suit for, and that he desires to prove this; or alleging that already final judgment had been rendered concerning the property in question; or that some agreement had been made with regard to it, by which the case had been settled; or bringing some charge against one of those in the suit, as, for instance, against the members of the council, stating that they should be watched, and giving some lawful reason why the party considers them liable to suspicion; or stating in opposition to the judgment which had been rendered in the case that it had been obtained by concealing the truth, and stating falsehood. Witnesses can be heard for any of the above mentioned reasons, although the principal suit has not been commenced by complaint and answer.

LAW VIII.

What Persons Cannot Be Witnesses Against Others.

Every man of good reputation, and who has not been forbidden by the laws of this our book, can be a witness for another in court and out of it, and those to whom this is forbidden are the following. A man who is of notoriously bad reputation, for a person of this kind cannot be a witness in any case, except one involving treason which is being plotted, or has already been committed against the king or the kingdom; nevertheless, his testimony should not be considered competent unless he has first been put to the torture. Moreover, a man cannot be a witness who has been proved to have given false evidence or who has forged a letter or a seal, or counterfeited the money of the king; nor one who has failed to tell the truth in his testimony on account of some reward which he has received; nor anyone who has been proven to have administered herbs or poison for the purpose of killing any person, or to in-

flict upon him any other bodily harm; or to cause a pregnant woman to lose her child. Nor, moreover, can those testify who commit homicide, except where they do so in self defense; nor those that are married and publicly keep concubines; nor those who violate women, whether they carry them away or not; nor such as remove women who belong to a religious order; nor those who leave an order, and wander about without permission of their superiors, while absent in this way; nor those who marry their female relatives, within the degrees forbidden by the Holy Church, unless under dispensation; nor anyone who is a traitor, or a perfidious person, or who is publicly known as a wicked man; nor anyone who has committed an act by which he is degraded to such an extent that he is not the equal of the other party.

We also decree that a man who has lost his mind cannot testify as long as his insanity lasts, nor any person who leads an evil life, as a thief, a robber, a well-known procurer, a gambler who openly frequents taverns and gambling houses, or a woman who goes about in men's clothes. Nor can a man who is very poor and vile, and frequents bad company testify; nor anyone who has taken an oath and did not keep it, when he ought to have done so and had the power. We also decree that the votary of another religion, as, for instance, a Jew, a Moor, or a heretic, cannot testify against a Christian, excepting in a case of treason plotted against the king or kingdom for in a case of this kind his testimony will be competent, where he is such a man that others who accept his religion cannot justly reject his testimony for the reason that it is not admissible, and where the facts have been established by other evidence, or by positive presumptions. When, however, those who acknowledge another religion have any suit among themselves, they can testify against one another in court and out of it.

LAW IX.

How Old Those Should Be Who Have to Testify.

A witness introduced against another in court, in a case involving a criminal accusation or impeachment, should be at least twenty years old. The witnesses heard in an investigation ordered to be made by the king against anyone, in order to obtain information concerning some evil deed he has committed, by which he was rendered infamous, and from which, if proved against him the punishment of death, loss of limb, or banishment from the country, may result, should also be of this age. But in all other cases which are not criminal ones, as, for instance, where suit is brought on account of a debt, or real property, or an inheritance, anyone fourteen years old may be admitted to testify.

Not only can those above mentioned in this law testify as to matters which they saw or knew at the time when they had arrived at that age, but also as to all other facts which they had previously seen and known, and remember well; but also where the testimony of a minor under twenty years of age is admitted in a criminal case, or one under fourteen years of age in other cases, we decree that, although his statements may not be conclusive so far as the case of the party against whom he testifies is concerned, nevertheless, being intelligent, such minors cause a great presumption as to the matter concerning which the testimony was made.¹

¹ The numerous conditions which are declared by the *Partidas* to disqualify persons from giving testimony must have, at times, seriously embarrassed the course of justice. Some of these are derived from the civil law, where great stress is laid upon the fact that the party is, or has been a criminal, or even accused of crime, and by it the evidence of an accomplice was not competent as against his associates. The list is much shorter in the Visigothic Code, where a prominent place is assigned to persons given to consulting sorcerers and diviners. "*Homicidae, malefeci, fures, criminosi, sive venefici, et qui raptum fecerint, vel falsum testimonium dixerint, seu qui ad sortilegos, divinosque concurrerint, nullatenus erunt ad testimonium admittendi.*" (For. Jud. II-IV-1).

LAW X.

Who Those Are Who Cannot Testify Against Another Party in a Criminal Case.¹

Where anyone is accused in court, in a criminal case, a person whom he emancipated, or the father or grandfather of the latter cannot testify against him, and this is on account of the great reverence which an enfranchised person should always have for the family of him from whom he obtained his liberty. We also decree that a party who is in prison, or anyone placed in chains by order of the king or council, while he remains in confinement, cannot testify against another who is accused in court in a criminal proceeding; and this is the case because he might very easily be induced to give false testimony at the request of some one who promised to liberate him from the prison in which he was confined. We decree that the same law shall apply to him who fights with a wild beast for money, and also to a woman who openly commits wickedness with her body for money.

LAW XI.

Who Those Are Who Cannot Be Compelled to Appear and Testify Against One Another, in a Criminal Case.

Some men are under very great obligations mutually, so that the wise men of the ancients did not deem it proper that they should be compelled to testify against one another in any case which concerned the person of any of them, or his reputation, or which involved an injury to the greater part of his property; and these are the following, namely; all those in the ascending or descending line of relationship, and others in the collateral line to the fourth degree. We also decree that a son-in-law shall not be compelled, in cases of this kind, to appear and testify against his father-in-law, nor his father-in-law against him; nor a step-child against his step-father, nor a step-father against his step-child. This is the case because the first of these should regard the other as his son, and the latter the other as his father. If, however, any of them, of his own accord and without any compulsion, should desire to give his testimony when he is asked to do so, he certainly has the right to give it, and whatever he says will be competent, just as if no obligation existed between him and the other party.

LAW XII.

In What Way the Testimony of One Who Has Been a Slave and Is Free, Becomes Competent.

Where a man is brought into court to testify against another, and he against whom he is introduced alleges that his evidence is not competent be-

¹ The Gentoo Code excludes some persons competent under other legal systems. "A slave of either sex, a blind man, a woman, a minor until fifteen years of age, an old man of eighty years, a man afflicted with a leprosy, one guilty of murder, of theft, of adultery, or of false abuse, or who, enticing a man to himself by treachery and deceit, deprives him of life, and destroys his effects, or whoever is constantly employed in games of dice and chances, or who is a perpetual wrangler or a juggler; such persons in affairs of murder, of theft, of adultery and of false abuse, may not be witnesses." (Gentoo Code, III-9.)

By the common law no party to a suit was permitted to testify, and the civil law likewise excluded the evidence of such persons. "*Nullus idoneus testis in re sua intellegitur.*" (Corp. Jur. Civ. Dig. XXII-V-10.) The common law also refused to admit the testimony of idiots and the insane, of those who were pecuniarily interested in the suit and of every one who did not recognize the binding character of an oath. It, along with civil law, classed persons who had rendered themselves infamous by the commission of some crime as incompetent, in which case however, conviction was essential. The rule has been greatly relaxed in this country and, as is well known, in some States convicts are brought from prison directly to the witness stand, their credibility being the main question to be taken into consideration by the court.

Under the Spanish Code, madmen, blind and deaf persons, minors under fourteen years of age, interested parties, relations in the ascending or descending line, husband and wife, brother and sister-in-law, and those entrusted with communications privileged under the law are not competent. (Cod. Civ. de Esp. IV-1-5.) Similar provisions exist in the laws of France and Italy. The Civil Code of Louisiana is almost identical with that of Spain in this respect. The fact that a witness is related as far as the fourth degree to one of the parties or is in his service is considered only as affecting his credibility. (Civ. Code of La. Art. 2260-2261.)—Ed.

cause he is a slave, and the witness answers that he is not, and never has been a slave; the judge presiding in the case should not fail to admit his testimony. If, however, after he has admitted it, it is established in court that the witness is a slave, his testimony will not be competent, but where this cannot be proved his statement shall be taken. But if the party who is said to be a slave, admits that he has been one, but now is free, then his testimony will not be competent, unless he is proved to be free by written evidence, or by witnesses. If he says that he does not have the letter or document necessary to prove his liberty in court, but that he has it elsewhere, the judge should take his oath that he did not make this statement maliciously, and give him time to produce his papers, and he can then admit his testimony; and if, within the appointed time, he should prove that he is free, his testimony will be competent, and not otherwise.

LAW XIII.

A Slave Cannot Testify Except in a Case of Treason Which Is Plotted, or Has Been Committed Against the King, or Kingdom, and in What Cases a Slave Can Testify Against His Master.

No slave can testify in court against another party,¹ except in a case of treason which some person is plotting, or has already committed against the king, or kingdom; for, in an act of this kind, every man should be a witness who is in possession of his senses, only he should not be the mortal enemy of the person against whom he is brought to testify. We also decree that a slave cannot give testimony under any circumstances, except in particular cases. The first is when his master is accused of treason which he either has committed, or intends to commit against the king or kingdom, or where his master is accused of theft or fraud with respect to the property of the king. The second is when a woman is suspected to have killed, or attempted to kill, the master of the slave, or the husband of the woman. The third is, when the charge is one of adultery of which his mistress is accused. The fourth is when there are two masters of one slave, and one of them is accused of causing the death of the other. The fifth is, when the master of the slave is killed, and the heirs of the deceased are suspected of having caused him to be put to death; for, in any of these cases, the testimony of a slave is competent, and should be believed, even though he may testify against his master. He should, however, be tortured while he gives his evidence, having been asked and warned to tell the truth, without mentioning the name of any person to him. He should be put to the torture for the following reason, namely; because slaves are, as it were, desperate men, on account of the condition of servitude in which they are, and every person should suspect that they will easily lie and conceal the truth when some force is not employed against them. We also decree that a party, who was formerly a slave and is now free, can testify with regard to every matter which happened that he saw while he was in servitude, and it will not affect the competency of his evidence if it is stated that when he saw the act committed he was a slave.

LAW XIV.

For What Reason Those in the Ascending Line Cannot Testify for Those Who Descend from Them.

Neither a father, a grandfather, nor others in the ascending line can testify in favor of their children or grandchildren, or others descended from them

¹ The Visigothic Code regarded the testimony of slaves, especially in criminal cases, with great suspicion, and although torture as a means of extracting the truth was in high favor in those times, its employment was not encouraged under these circumstances. An exception was made, however, in the case of royal slaves. "*Servo penitus non credatur; si super aliquem crimen abiecerit, aut etiam si dominum suum in crimine impetierit. Nam etiam si in tormentis positus exponat quod obiecit, credi tamen illi nullo modo oportebit, exceptis servis nostris, qui ad hoc regalibus servitiis mancipantur.*" (For. Jud. II-IV-4.) The testimony of a slave in cases of inferior importance could not be taken as against a freeman.

in this same line. We also decree that none of the said descendants can testify in favor of those from whom they are descended; where, however, any controversy arises concerning the age of any of said descendants, or by reason of relationship, the father, the mother, the grandfather and the grandmother, can give testimony in a matter of this kind. We also decree that where anyone has a son who is a knight, his father can be a witness to a will which his son made while in the army, or while with a foraging party.

LAW XV.

A Wife Cannot Testify in Favor of Her Husband, Nor a Husband in Favor of His Wife, or a Brother in Favor of His Brother While They Are Living Under Control of Their Father.

A wife cannot testify for her husband in court, nor a husband for his wife in a case in which they are sued. We decree that this same rule shall apply to every suit whatsoever that may be brought against either of them. Moreover, we decree that a brother cannot testify in court for his brother while both of them are under control of their father and live together, holding their property in common; but after they have both divided said property, and live by themselves, one can testify against the other.

LAW XVI.

Persons Who Live in One House and Belong to One Family Can Be Witnesses in a Suit Against Another Party.

A father and his sons who live in the same house, or brothers who live under control of their father, can be witnesses in a suit brought by another party, although they cannot testify for one another, as we stated in the preceding law, and will not prejudice the cause of him in whose behalf they testify for the reason that they live together, or belonged to one family when they gave their testimony.

LAW XVII.

A Woman of Good Reputation Can Be a Witness.

A woman of good reputation can be a witness in any suit except one relating to a will,¹ and we decree that the same rule shall apply to a person having the characteristics of both sexes; but where the nature of a person of this kind is more that of a man than of a woman, he can be a witness in any suit in which a will is concerned. This law is understood to refer to cases where the woman is of good reputation, but if she has been convicted of adultery, or is degraded, or of bad reputation, her testimony will not be competent in any case, as we stated above.

LAW XVIII.

No One Can Be a Witness in His Own Case, Nor Can Those Under His Control Testify in His Behalf.

No one can be a witness in his own case. Moreover, in such a suit neither the testimony of his son, nor of his slave, nor of his freedman, nor of his steward, nor of his overseer, nor of his laborer, nor of his gardener, nor of his miller, nor that of anyone who eats his bread, will be admissible. This is the

¹ By the law of Spain a woman cannot witness a will, except during an epidemic. (Cod. Civ. de Esp. III, 1-3 Art. 681, 701.) The same rule is in force in Italy (Cod. Civ. d' It. III-II Art. 788, 789.) In France, a woman is a competent witness to a will, at all times, except when her husband also signs it. (Cod. Civ. de Fr. III-II-1 Art. 980.)—Ed.

case because it would neither be proper nor just for one man to take the position of both party and witness; nor should those who live by his favor and are compelled to obey his orders be allowed to testify for him. But in a lawsuit in which a council, a monastery, or a conventual church is interested, those belonging to said council, monastery, or conventual church, can give their testimony. This is the case because although the suit concerns all in common; it does not wholly concern anyone individually. Wherefore a person should not suspect that good men are introduced to give testimony in suits in which institutions of this kind are interested, for the reason that they are willing to lose their souls by testifying falsely on behalf of others.

LAW XIX.

A Vendor Cannot Testify Concerning the Property Sold, Nor Can a Judge Be a Witness in a Case Tried Before Him.

Where one party has bought a field, a vineyard, or any other property whatsoever, from another, and afterwards proceedings are instituted, or a controversy arises with regard to said property, the purchaser cannot introduce the party who sold him the property as a witness to testify respecting it, for the reason that a suit of this kind concerns the purchaser as much as the vendor, since he is bound to make good the title.

We also decree that no judge can be a witness in a case which he has decided, or is to decide; he can, however, give testimony concerning matters which occur in his presence with regard to the manner in which the occurrences took place, when he is asked to do so by the king, or by other superior magistrates who have jurisdiction in appeals.

LAW XX.

Neither Advocates, Attorneys, Nor the Guardians of Minors, Can Testify in a Suit Which They Defend, or Bring.

An advocate cannot be a witness in a case which he has commenced to argue, but if the opposite party should call him as a witness, he can then testify. Moreover, we declare that attorneys and the guardians of minors cannot be witnesses in any suit which they defend or bring for those whose attorneys or guardians they are.

LAW XXI.

For What Reason Those Who Are Partners in Trade or in Any Transaction Cannot Testify Against One Another.

When those who are partners in trade or in any other transaction, have a suit in court concerning the business in which they are associated, the testimony of either in behalf of the other shall not be admitted, for the reason that the gain or loss of said case interests each one of them according to the amount of his share. However, in any other suit which does not concern them all in common, one can testify in behalf of another, although they may be partners and friends. We also decree that where any persons have committed an offense together, and afterwards one of them is accused on account of it, none of his companions who were present and took part in the commission of said offense can be a witness against him.

LAW XXII.

Those Who Cherish Hatred Against One Another, or Who Are Unknown to the Judge or to the Party Against Whom They Are to Testify, Should Not Be Witnesses.

Hatred often influences men in such a way that although they know the truth they are unwilling to tell it, but rather state the contrary; and therefore we forbid that any man who entertains great hostility towards another shall be a witness against him in any suit where the enmity arose on account of some relative whom he killed; or where he may have tried to kill the party himself; or where he has been accused, or rendered infamous concerning something which, if it were proved upon him, would cause him to be put to death, or suffer loss of limb, or banishment from the country, or forfeiture of the greater part of his property. For, on account of any of these causes from which enmity arises among men, they should not be witnesses against one another as long as their enmity lasts. We also decree that a person unknown to the judge or to the opposite party should not be permitted to testify if he is of despicable character and very poor.¹

LAW XXIII.

In What Way a Judge Should Receive the Statements of Witnesses.

A judge should take the oath of witnesses before he hears their testimony, and he should swear them while the party against whom they are introduced is present, notifying him beforehand, and appointing a day upon which he may come and see them sworn. Where, however, the said party, after having been notified, is obstinate and refuses to come, the judge should not, for this reason, fail to take the oath of the witnesses, and admit their testimony.

We also decree that no witness shall be heard without being sworn, nor will his testimony be competent without it, except where both parties, confident of the loyalty of the witness, agree to excuse him from being sworn; or where there is a controversy concerning certain property claimed by a wife, who took possession of a part of the possessions of her deceased husband, for the reason that she was pregnant by him, and the judge orders some intelligent women to make an examination of her, to determine whether she is pregnant or not, and afterwards to state their conclusion to the court. Women of this kind do not have to be sworn, but it is sufficient for them to state plainly the conclusion at which they have arrived, that is whether she is pregnant or not; and although such women give their testimony on belief, it should be competent under such circumstances, for no one can testify positively except as to what he sees.²

¹ Indigence was held by the ancient lawgiver to disqualify a witness on account of the temptation to accept a bribe to which impecunious persons were supposed to be especially liable. So low was the ordinary standard of morals in those times that poverty and dishonesty were presumed to go together. Persons of high rank were thought to be governed by the rules of honor and chivalry, an inference that was far from being generally realized. This regulation has long since been discarded by civilized tribunals.—Ed.

² This corresponds to the proceedings pursuant to a writ *de ventre inspiciendo* at Common Law, where a widow was suspected of feigning pregnancy in order to obtain an inheritance for a spurious heir; and also where the court impanelled a jury of twelve matrons to examine the condition of a woman convicted of a capital felony.—Ed.

LAW XXIV.**How Witnesses Should Be Sworn, When They Are to Be Examined Concerning Any Fact.**

The following is the way in which a witness should be sworn before a judge, namely: he should place his hands upon the Holy Gospels, and swear to tell the truth of what he knows about the case in which he is called, as well for one party as for the other; and that he will not mingle falsehood with his testimony; and that, neither on account of love, hate, fear, nor anything given or promised him, nor because of any injury or benefit which he may expect to receive therefrom he will fail to tell the truth, and that he will not conceal it; and that he will reveal everything that he knows concerning the case in which he is called as a witness, although it may or may not be asked of him by the judge. He must also swear that he will not disclose to any of the parties what he stated in his testimony, until the judge has made it public, and all these things he should swear by God, by the saints, and by the words contained in the Gospels. Where, however, the witness is an archbishop or a bishop, there is no reason for him to place his hands on the Gospels, but it will be sufficient if he swears to tell the truth, as he should do, the Gospels being before him, as we stated above.

LAW XXV.**How Many Things Those Should Swear to, Who Are Called to Tell the Truth in Any Investigation Which the King or Any Other Person, by His Order, Desires to Make.**

Those should be sworn who are called to tell the truth in any investigation which the king, or any other person by his order, desires to make in the way stated in the preceding law, according to the custom of Spain, and he should especially swear to three things, as follows: first, that he will tell the truth concerning what he is absolutely certain; second, that he will do so with regard to what he has heard said; third, that he will do so as to what he believes concerning the matter about which he is interrogated whether it is true or not. If, however, the king is to make the investigation in person, the oath can be taken without any book in the following way: the king taking the hands of the party between his own and conjuring him, as we stated in the former law and also on account of the authority which he has over him, and under the penalty which he may think he deserves, according to the circumstances of the case, if he denies the truth.

LAW XXVI.**How a Judge Should Question a Witness After He Has Sworn Him.**

After a judge has sworn witnesses, as stated in preceding laws, he should take one apart from the rest, into a place where no one can hear, and have some intelligent notary with him to write down what the witness says, so that none of the other witnesses can know what he stated. He should cause the complaint or the statement of the case in which he is introduced as a witness, to be read to him, and admonish him to tell the truth, as far as he knows it. After the witness commences to give his evidence, the judge should listen to him kindly, and be silent until he has finished, looking him all the time in the face. When he has finished speaking the judge, or the clerk who is to write down his statements, should begin to speak, and should say to him:

"Now listen to me, for I wish you to hear if I understand you well," and he should then repeat what the witness stated. If he remembers what he said, the judge should immediately cause it to be written down, or should himself do so, well and faithfully, so that nothing may be either omitted or added, and after all this has been done, he should cause it to be read to the witness, and if the latter thinks that it is correct, he should admit it. Where he sees that there is anything to correct, this should immediately be done, and after everything has been corrected, the judge should cause the testimony to be read to the witness, and if the witness thinks that it is correct he should say so. And he who takes the testimony of the witness, who says that he is familiar with the facts, should ask him how he knows them, making him state in what way he ascertains them, whether by sight, hearing, or belief, and whichever way he mentions, the judge should cause to be recorded.

Where, however, the witness is not asked in what way he obtained his information, his testimony will be as competent as if he had openly stated the way in which he had obtained it; so that, after he leaves the presence of the judge, he should not be questioned further, except where he testifies in some case involving punishment by death, loss of limb, banishment from the country, or some other serious matter, in which we consider it proper that he may be again interrogated in secrecy, and be required to state the way in which he secured his information; and if he is questioned in this manner, and refuses to state the source of his knowledge, his testimony should not be considered admissible, since he is really ignorant, or is unwilling to give a reason for what he says. After witnesses have been introduced before a judge and been sworn, they should not leave that place without his order, until they have finished their testimony; and where the judge is occupied with other cases, so that he cannot immediately hear their evidence, they should wait for him at least fifteen days. The party who brought them should, however, pay their expenses from the day they left home to come and give their testimony until they have finished giving it.

LAW XXVII.

When a Party Has Witnesses in Another Jurisdiction to Prove His Case, the Judge Before Whom the Suit is Brought Should Send His Letter to the Judge of That Jurisdiction, That He May Take the Testimony of Said Witnesses.

It might happen many times that witnesses whom parties introduce to prove their cases are not in the jurisdiction where the suit is begun by complaint and answer. For this reason we decree that the judge should send his letter to the judge of the district where the witnesses live, and ask him to take their testimony, and have it reduced to writing and seal it with his seal, so that none of the parties may know what the witnesses testified to, and, after he has done this, to send it to him.¹ And we order that the judge of the district where the witnesses live shall be required to do this, except where the proceeding is of such a character, as to involve punishment by death, or by loss of limb, or by banishment from the country, for, under such circumstances, we deem it proper, and we direct, that the judge who is to decide the case, and no one else, shall take the testimony of the said witnesses.

¹ Taking depositions by order of court is of great antiquity. It was customary under the civil law, and is referred to in the *Forum Judicum* (II-IV-5). As is stated in the text, all oral evidence was reduced to writing in this form, for greater convenience. According to the early practice of Rome, testimony was given orally, and the witnesses were examined and cross-examined by the parties or their attorneys.—Ed.

LAW XXVIII.

In What Way Witnesses Should Be Examined, and When Their Testimony Is Competent.

A witness having been asked in what way, or how he has learned what he states in his testimony, and he replies that he knows it for the reason that he was present when the contract was made, or the transaction occurred, and that he saw it done, his testimony will be competent. But where he says that he heard it said by another party, his testimony will not be competent, except in contracts and agreements which men make with one another in which hearsay evidence is admissible, as in the following manner, the witness stating: "I saw and heard So-and-So and So-and-So make such-and-such a contract or agreement:" but where the witness merely says that he heard one party say to another, that Such-and-Such men made an agreement in a certain way, or that one man had killed another, such testimony will not be competent for the reason that the witness states it on hearsay. But if he should say as follows: "I saw So-and-So make a contract with Such-and-Such a person, or I saw one man kill another:" testimony of this kind will be competent, being such as is sanctioned by the law. We also decree that witnesses should be examined as to the time an act concerning which they testify took place, as, for instance, the year, the month, the day, and also the place where it occurred. When witnesses disagree, one stating that it occurred in one place, and another in another, their testimony will not be admissible. For this reason Daniel the prophet rejected the witnesses brought before him to testify against Susanna, as they disagreed concerning the place while giving their testimony. The witnesses should also be asked who were the others present when the transaction about which they testify took place, and no more questions should be asked a witness, if he is a man of good reputation. But where he is a worthless person, and one liable to suspicion, and the judge sees that he wanders in his testimony, he should then put other questions to him, in order to detect him in his inconsistencies, speaking as follows: "What kind of weather was it when this transaction to which you are testifying took place? Was it cloudy, or was it sunshiny? How long have you known these men concerning whom you are testifying? How were they dressed when this matter, which you mention, occurred?" For through his answers to questions of this kind, and by the expression which he sees on his face, the judge will know whether to believe what the witness says or not.¹

LAW XXIX.

In What Suits Testimony Called Hearsay Is Competent.

Controversies sometimes arise between men on account of ancient structures, some complaining that from lofty buildings, erected by the hands of men, water flows, injuring their lands or their houses, and petition the judge to order said structures to be removed or demolished. It happens frequently that buildings like these are very old and no living man has seen them constructed, for which reason the wise men of the ancients, who made the laws, deemed it proper that in an instance of this kind, hearsay testimony should be competent, being stated in the following way: "I say that the water

¹ By the *Partidas*, as in the procedure of nations whose judicial system is founded upon the civil law, the judge conducted the principal cross-examination of witnesses, which was often done with great and unnecessary barbarity. Many of these officials have, in modern times, proved themselves no unworthy successors of Chief Justice Jeffreys of unsavory memory. The habitual and frequently relentless exercise of such a function must necessarily affect the impartiality of the court, as well as seriously impair the judicial dignity which should be maintained to insure the good reputation and consequent usefulness of the magistracy.—Ed.

which flows from such a place to such another place causes damage, and that the structure from which it flows was built by the hand of man." If the witness is asked how he knows this, and answers that he heard others say so who saw the building erected; or that he heard others say that they saw those who saw it done, and there was common report among men that this was the case, and when this is true it will be sufficient for the plaintiff.

We also decree that if the defendant proves by his witnesses that they did not see these structures built, and did not hear that they had been constructed by the hand of man, and that there was no one who heard this said, but that the report was common that the said work was raised by nature, and not erected by the hand of man, then testimony of this kind, will be sufficient to establish the claim of the defendant; but in any other case except that which we have mentioned above, hearsay testimony will not be competent. Moreover, we decree that the testimony of a witness who states that he does not know in what way he has learned what he testifies to, and only says that he thinks that it is true, shall not be competent.

LAW XXX.

Where a Witness Was Not Interrogated by Means of Written Questions Agreed Upon by the Parties, He Should Be Examined Again as to the Matters Concerning Which He Was Not Previously Questioned.

Parties sometimes tender certain questions in writing to the magistrate who is to take the testimony of witnesses, requesting him to ask them, and it happens that when the evidence is opened, they find the questions have not been asked, and, for this reason, request that the witnesses be again examined. Wherefore we order that in an instance of this kind, where the question which was not asked was one pertaining to the case, the judge shall cause the said witnesses to appear before him, and examine them again in secrecy concerning those matters about which they were not previously interrogated, and what they say shall be admitted, just as if they had been examined in the first place. But if a witness, after he has finished his testimony and retired from the presence of the judge, should speak with any of the parties, and, of his own accord, should return and say that he had something to add to, or to take from, his testimony, the judge should, under no circumstances permit this to be done. If, however, a judge should find any doubtful or ambiguous words in the statements of the witness, so that he can not clearly understand it, he can order him to be brought before him, and in secret make an explanation to remove the doubt, and the witness should do this, and what he states with regard to the matter will be competent, although he may have spoken with one of the parties after he gave his evidence. We decree that the same shall apply to witnesses heard in a case of investigation.

LAW XXXI.

In What Way Testimony Reduced to Writing, or Sent by a Letter, Can Be Excluded.

We decree that evidence put in writing, or sent in a letter, can be rejected by those against whom it is given; for we do not consider it just that any one should send his testimony in writing to a judge; for when any one is to testify he, himself, should come and state truly what he knows before the magistrate who is to decide the case, or before someone else whom the latter has ordered to hear it for him. He who is to hear the testimony should cause it to be reduced to writing, as we stated above. We, moreover decree

that if one person should accuse another of any offense, and brings as witnesses his relatives, up to the third degree, or any other persons who live constantly with him, they shall not be heard.

We also decree that if anyone has a suit against another, and brings witnesses to prove his case, and his opponent introduces the same witnesses to establish another claim against the said party, the latter cannot exclude them on account of their persons; for it is just that, since the party introduced them as competent witnesses in his case, he should permit them to testify against himself, if it is necessary; except where he who introduced them in the first place, proves that enmity subsequently arose between them, or that they afterwards committed such an act that they could be excluded by the laws of this Title. We decree that the same rule shall apply to their persons. The party can, however, protect himself against their statements, or where he gives a lawful reason to exclude them, as directed by the laws.

We also decree that witnesses shall not testify concerning other matters than those relating to the case in which they are to give their evidence, and about which they swore to tell the truth; for if they should testify concerning things which did not pertain to that case, they should not be believed, so far as such irrelevant testimony is concerned, but only with regard to such matters as relate to the case itself.

LAW XXXII.

How Many Witnesses Are Necessary for Proof in Each Case.

Two witnesses of good reputation and who are of such a character that they can not be excluded for the reasons ordered by the laws of this our book, are sufficient to prove every case in court, except one involving the discharge of a debt of which a record had been made by a notary public. For where a debtor desires to prove that he has paid such a debt, and that he has been released by the party to whom he owed it, he must establish this by competent written evidence, or by five witnesses who state that they were present when the said payment or release was made, and that they were summoned or asked to be witnesses to the fact.

We also decree that a will, in which anyone was appointed an heir must be proved by seven witnesses requested to act as such. If the party who made the will was blind, it must be proved by eight witnesses. Any other will, containing bequests, in which a party was not made an heir will be sufficiently proved by five witnesses. But we decree that no agreement can be proved by one witness, no matter how good and honorable a man he may be, although a strong presumption will arise as to the act concerning which he testifies. Where, however, an emperor or a king gives testimony concerning any matter, we decree that this will be sufficient to prove every case; for every man should consider that he who is appointed to maintain the country in justice and in right would not state anything but truth in his testimony, or desire, in an instance of this kind, to assist one person in order to embarrass another. We also decree that a judge shall not permit any of the parties to introduce in court more than a dozen witnesses in one suit, for we hold that this number is sufficient for him who summons them to prove his case.

LAW XXXIII.**What Periods of Time, and How Many of Them, Those Who Are Obligated to Introduce Witnesses Are Entitled to.**

We desire to show in this law what periods of time those who are obliged to introduce witnesses are entitled to, and we decree that they shall have the following. Where the witnesses are in the town where the suit is to be tried, they should be granted, in the first place, the period of three days; and if the party does not introduce them on the third day, he should be granted a second term of three days; and if, during these two terms, he does not introduce them, he should be granted still another period of three days. But where the witnesses are not in the town where the case is to be tried, and are within the district, or near its boundary, he who has to produce them, should be given a first term of nine days, and, if necessary, another of nine days, and then still another of the same kind, until there are three terms of nine days each. Where the witnesses are at a great distance from the district, a term of thirty days should be granted a party to produce them, and he, having given their names, should swear that he does not do this to protract the suit, but that he believes that these men are acquainted with the facts and will prove them, and if he does not produce them within this term, he is entitled to two other terms, of thirty days each, in order to bring his witnesses if it should be necessary. This term of thirty days which we have mentioned is understood to refer only to parties who belong to the country where the suit is brought and go outside of its boundaries to make collections, or attend to business which cannot be avoided. But where the witnesses are at a great distance in a foreign country, so that they cannot be produced within the periods aforesaid, the matter should rest in the discretion of the magistrate who has to decide the suit, he having agreed with the party who is to produce the witnesses to give him such time as he thinks will enable him to bring them, provided that the longest period which he grants him within which to prove his case shall be nine months, and no more.

LAW XXXIV.**For What Reason a Judge Should Hear Other Witnesses, if a Party Desires to Call Them, Although He May Have Stated That He Does Not Wish to Introduce Any More Witnesses.**

Sometimes one of the parties introduces witnesses in court to prove his case, and, thinking that he has proved it by them, tells the judge that he does not wish to call any more witnesses, and asks for judgment on the testimony of those who have been heard, and, after this, changes his mind, and desires to call others. In an instance of this kind we decree that if the testimony of the witnesses who have been heard has not been disclosed; and the party swears that he wishes to introduce others; and that he does not know what the witnesses whom he produced in the first place nor what the others introduced by his opponent have stated; and all the periods of time in which he had the power to produce testimony have not elapsed, his evidence shall be taken, and there is no reason to oppose him, because he stated that he did not wish to introduce any more testimony. This is done in order that the judges may always be careful to endeavor to ascertain the truth in every way that they can. But when the time has entirely elapsed the judges should not admit the testimony of such witnesses except in the case of a document or instrument in writing, for this can be admitted before the arguments are closed.

LAW XXXV.**How a Judge Can Employ Coercion Against Witnesses, Who Are Unwilling to Appear and Give Their Testimony.**

Men ordinarily can derive much benefit from witnesses in their suits, and, for this reason, every man who is called to testify in behalf of another before a judge should come prepared to give testimony concerning what he knows. For he who does so shows that he is obedient to the judge, and, moreover, he does a favor by telling the truth, and where any one is obstinate, and unwilling to come and give his testimony, the judge has power to compel him to do so, by causing him to be placed in custody, until he does come. Where, however, anyone desires to produce a witness in court who is over seventy years of age; or who is a knight stationed on the frontier; or is employed in some other service of the king from which he cannot withdraw without his order; or is a judge of some district; or is an officer collecting provisions for the army, or one in charge of a baggage-train; or a party on a pilgrimage; none of the above-mentioned persons, so long as these impediments exist, shall be compelled to come and testify in court if they do not consent to do so voluntarily. We decree that the same rule applies to him against whom great hostility exists, so that he cannot go and give his testimony in the place where he was summoned to do so without personal danger, and this applies also to a person who is seriously ill. Moreover, we decree that no archbishop, bishop, or prelate of the Holy Church, who occupies a high position, or noblemen of distinguished rank, or women of aristocratic families, shall, any of them, be compelled to appear and give their testimony in court. However, the judge before whom the names of such persons as these are given as witnesses—where the case is one of great importance and the truth cannot be ascertained except by means of the said witnesses—should go in person to the place where they are, and take their testimony, causing it to be reduced to writing, and they should tell him the truth concerning the case, so far as they know it. Where the case is not important, the judge can send his clerk to take the testimony of said persons and reduce it to writing, and where the testimony of witnesses is heard in this way it is as competent as if they themselves had appeared to give it in court.

LAW XXXVI.**In What Way a Broker Should Give Testimony Concerning What He Sells.**

When a dispute arises between parties with regard to property sold by a broker, and those between whom the controversy exists agree among themselves that the broker may testify concerning said property, the judge should compel him to come and give his testimony before him, so far as he has knowledge. But where one party is willing and the other is not, then the broker should not be compelled to give his testimony, if he does not consent to give it voluntarily.

LAW XXXVII.**The Judge Should Appoint a Time for the Parties to Come and Hear the Statements of the Witnesses.**

After a judge has heard the statements of the witnesses, and the periods of time which we mentioned above have elapsed, he must summon the parties and appoint a day that they may come and hear what the witnesses have stated; and if either of them should be disobedient, and refuse to come, the

judge should not, on this account, fail to publish the statements of the witnesses, if the other party, who was obedient, demands it. He should, moreover, give a transcript of the evidence of the witnesses to both parties, in order that the plaintiff may see if he has proved his case, and the defendant may remember if he has anything to allege against it.

And if, after the statements of the witnesses have been made public in this manner, any of the parties desire to introduce other evidence to prove the same thing concerning which the first witnesses have testified, the judge should not admit their testimony; except when either of the parties desires to prove by other witnesses that what the first ones testified to against him was false; or that they did this for money; or for some other consideration which was given or promised them; for, in an instance of this kind, he certainly has the power to introduce them, and their testimony will be competent. We also decree that he who introduced the first witnesses, can introduce others in opposition to those introduced against him, in order to contradict them, if he desires to do so, but, from that time forward, neither of the parties can introduce any new witnesses.

LAW XXXVIII.

What Force the Statements of Witnesses Heard by Mediators Have Before Judges.

Men sometimes place the controversies which exist between them in the hands of mediators, and introduce witnesses before them to prove their cases; and it happens that they are not decided by them and are afterwards brought before judges of the fuero. And, because a dispute may arise concerning witnesses heard in this way and their statements, as to whether they could afterwards be again admitted, we desire to decide this question here. And we decree that, if the parties made any agreement among themselves when they placed their case in the hands of their friends, with regard to the witnesses whom they might introduce, if the case was not decided by them, namely, as to whether the statements of the said witnesses would be competent or not, this agreement shall be valid. If no agreement was made concerning the witnesses, it should then be at the option of the party against whom they were introduced, to cause them to repeat their testimony before the judge, or to abide by what they stated before the mediators. Where, however, the witnesses have died, then we decree that what they stated before the mediators will be competent, in every respect, and the judge can decide the case by their statements, just as if he himself had taken them; except that the party against whom they are introduced can allege against the persons and the evidence of said witnesses everything by reason of which he may lawfully cause their testimony to be rejected. We also decree that where witnesses have testified before a judge, and he afterwards dies, or is removed from office before he decided the suit, another judge, appointed in his place, can render a decision based upon the statements of said witnesses, just as he who took their testimony could do if he were living.

LAW XXXIX.**In What Cases Other Witnesses Can Be Brought Before the Judge of a Court of Appeal, Although the Statements of the First Ones May Have Been Published.**

Although we stated in the preceding laws that after the evidence of witnesses has been made public, others cannot be introduced to testify to the same things for which the first ones were called, there are, however, instances in which this may be done. This would occur where judgment was rendered against the party who introduced the witnesses for the reason that he was not able to prove his case, and he subsequently took an appeal, and while prosecuting the appeal a witness should come to him who was not in the country when he called the others, or who was in the country, and he had not remembered him so as to call him when he produced the others; for, in a case of this kind, the appellate judge can hear such witnesses, he who calls them having first sworn that he is not actuated by fraud or malice, and does not do this for the purpose of delay, and that, when he called the other witnesses, he could not call these, or that he did not remember them at that time.

LAW XL.**What Weight Witnesses Have in Suits in Which Men Contend in Court.**

The weight which witnesses have in cases in which men contend in court, is the following, namely; when either of the parties introduces witnesses in his behalf, and proves his case conclusively by means of them; where they are such as should not be excluded for any of the reasons we mentioned in this Title the judge should follow their testimony, and render judgment in favor of the party who called them; but where both parties introduce witnesses into court, and each of them proves his case by means of said witnesses, so that the statements of one party contradict those of the other, the judge should then carefully consider and believe the evidence of the witnesses who he thinks tell the truth or who come the nearest to doing so, and who are of the best reputation and the most integrity, and he should believe persons of this kind, and be guided by what they testified to, although the others, who stated the contrary, may be more in number.

Where the witnesses happen to be equal with respect to their character and their evidence, for the reason that all of them are reliable men, and each seemed to make statements that were probable, in an instance of this kind those should be believed who agree, and are superior in number, and judgment should be rendered for the party who produced them. Where evidence is introduced into court, and the witnesses on one side are equal in number, in the reliability of their statements, and in their reputation, to those on the other, we decree that the judge shall declare the defendant discharged from liability for the claim for which suit was brought, and that no discredit shall attach to the witnesses introduced against him; for the reason that judges should always be prepared rather to discharge a defendant than to hold him liable when they find any just reasons for doing so.

LAW XLI.**When Witnesses Disagree in Their Statements, the Judge Should Believe Those Whose Testimony Seems Best to Coincide with the Facts.**

It can easily happen that the witnesses introduced by one party may disagree in their statements, so that some of them say the opposite of what the others do; for which reason we decree that, whenever this takes place, the judge should believe those who seem to approach nearest to the truth and who agree the best as to the facts, although the others may be more in number, and the contradictory testimony which the latter have given should not prejudice the other party's case. For although when a party, in order to prove his case, produces two documents in court which contradict one another, neither of them will be valid, as we shall show hereafter; nevertheless, this rule should not be applied to witnesses, because he who produces documents in court, can, before he exhibits them, take measures to see or ascertain whether one conflicts with the other or not, and therefore it will be his own fault if he produces a contradictory document in court. But, in the case of witnesses, no one can take this precaution because they frequently tell the party who introduces them that they will make a certain statement, and when they are in the presence of the judge, they state the contrary, in secrecy, of what they know to be the fact. For this reason no blame should attach to the party who produces them, nor should his case be prejudiced because they disagree, for he can prove it only by the testimony of some of them who are reliable men, and the others who give contradictory evidence may not be more in number, or of better standing. But when a witness contradicts himself in his testimony it should not be admitted.

LAW XLII.**What Punishment Witnesses Deserve Who Knowingly Give False Testimony Against Another.**

Witnesses who knowingly give false testimony against others, or conceal the truth, on account of the hatred which they cherish against certain persons, deserve only very severe punishment; and for the reason that matters which men testify to are not all of equal importance, we cannot prescribe the same penalty in all cases. But we grant by this law full authority to all judges who have power to impose sentence, that when they perceive that witnesses brought before them vary in their statements, and change them, and that those who do so are degraded men, to torture them, in order to extract from them the truth.

We also decree that if they can ascertain that witnesses brought before them have given, or do give, false testimony; or that they are knowingly concealing the truth, although no one may accuse them of this, they may, by virtue of their office, punish them, and inflict such penalties upon them as they think they deserve; always carefully considering the gravity of the offense which they committed while giving their testimony and the facts concerning which they testify. But where anyone is found to have testified falsely before another judge who has not power to inflict punishment, he should send the witness to his superior, to inflict such a penalty upon him as he thinks he deserves.

TITLE XVII.

Concerning Examiners, Who Themselves, by Reason of Their Office, Have Authority to Take Testimony Although the Parties May Not Produce It Before Them.

What kings should most exert themselves to do, as the wise men of the ancients declared, is to seek every way which can be found to ascertain the truth of the suits and complaints which come before them, and especially that of the serious offences which men who do not fear God, or respect their lord, or, relying upon the power which they possess, insolently commit in the country; or who do these things secretly, through frenzy or manifest wickedness. And for the reason that it frequently happens that improper acts of this kind are so concealed that the truth cannot be ascertained regarding them from witnesses brought before magistrates in court, it became necessary for kings to seek another method of proof, called an investigation, by means of which the truth of matters could not be concealed from them through want of testimony. Wherefore, since in the preceding Title we spoke of witnesses introduced by parties in court to prove their cases, we desire in this one to speak of the examiners who have power to take testimony themselves by reason of their office, although the parties may not produce it before them. We shall first show what an investigation means; what benefit is derived from it; how many kinds there are; who can order it to be made, and concerning what matters this can be done; what kind of a person an examiner should be; what he should do and observe; and what punishment examiners merit who do not do their duty faithfully.

LAW I.

What an Investigation Means, and What Benefit Is Derived from It, and in How Many Ways It Can Be Made.

Pesquisa, in Castilian, means the same as *inquisitio* in Latin, and it is advantageous in many respects, for, by means of it, the truth is ascertained concerning evil deeds, which can be proved, or established in no other way. And, moreover, kings, by means of it, are informed with certainty of the acts done in their country, and punish false and insolent men who, through deficiency of evidence, expect to escape punishment for their misdeeds. Investigations can be made in three ways; first, when one is instituted generally over some large country, or a part of it; or with respect to some city or town, or some other locality in which an inquiry is made concerning all those who reside there or only a portion of them.

A king may be impelled to make an investigation of this kind for three reasons, for it may either be begun by someone who complains of the injury or damage which he received from the places above-mentioned, but does not know who committed it; or it may be instituted on account of the bad reputation of the place brought to the notice of the king, or of those who have the power to order an investigation to be made in the localities aforesaid; or the king may order it while traveling through his dominions, in order to ascertain their condition, although no one may make any complaint and no evil be in circulation. This the king can do for the sake of justice, for frequently men do not desire to make a complaint, or to expose the condition of the country either by a denunciation or by rumor, and this may be caused either by affection or fear. Wherefore we decree that the king can make an investigation for the better regulation of his dominions, and as a warning to men not to dare to commit crime.

The second kind of investigation is one which is made of the deeds of certain persons who are of bad reputation; or of certain particular acts, where it is not known who was responsible for them; or of certain acts performed by well-known men; this would be the case, for instance, where a reward had been accepted.

The third kind of investigation is when both parties agree to apply to the king, or to whomsoever is to decide their case, to order an investigation to be made.

LAW II.

What Things Examiners Appointed to Make an Investigation Should Observe.

Examiners appointed to make an investigation in the provinces of countries or the districts of magistrates, must observe the things which we set forth here. In the first place, they should not make an investigation of the condition of a country which they have been appointed to examine, or of any part of it, except by order of the king, or by that of the Chief *Merino* who has been appointed by the king, personally, or by letter. But where an investigation is to be made concerning some evil report which one or many have heard, it can be instituted by order of the Chief *Merino* of the district.

We decree that the same rule shall apply to those who make investigations of cities and towns, for they should not inquire into the matters we have mentioned and which they are authorized to do, except by order of the presiding magistrate of the district where they have been appointed examiners. We also decree that examiners should be appointed especially by the king, when a general investigation is to be made, or when it is desired to learn the state or condition of the district, or of any other part of the country where an investigation has been ordered.

The lords of certain privileged localities if they have power to pass sentence can appoint examiners, when they desire to make an investigation. There are, moreover, examiners who should be appointed to investigate cities and towns, and those who are clothed with powers of magistracy, and authority to inflict punishment should appoint them, with the advice of the Council, along with good men selected from each district.

LAW III.

Who Are Called Examiners, and What Things They Should Investigate.

Those are called examiners who are appointed to inquire into the truth of evil deeds committed secretly; as, for instance, the death of a man killed in a deserted neighborhood, or by night, or in any place whatsoever where he lost his life when it is not known who killed him; or where a church was broken into or robbed at night; or where a woman has been violated and the violation was not committed in an inhabited place; or where a house was burned, or broken into, or entered by force, or in any other way; or where crops were destroyed by fire, vines or trees cut down; or a highway obstructed, and men wounded, robbed, taken prisoners, or killed there; all these things when they are done secretly, as we stated, and whether they are done by day or by night—for the reason that many evils and great injuries result, and men are not able to protect themselves from them—should be inquired into and the facts ascertained by the examiners, but no complaints of this kind must be made by individuals; for, under such circumstances, an investigation could not be instituted. There are, however, some cases in which an

investigation can be made, although the acts may not have been secretly committed; as, for instance, where a reward was accepted; or where violence or robbery has been committed, and it is asked as a favor of the king that he order the matter to be inquired into; or with regard to anything else which parties agree to before the king, or before any others invested with judicial authority.

LAW IV.

What Kind of Men Examiners Should Be, and Who Cannot Act as One.

Examiners should be moral men who fear God and are of good reputation, since as the result of their investigations many persons must die, and suffer other corporal penalties or loss of property, according to the acts which the examiners find those against whom they make their inquiries have committed; and they should be such men as love to serve the king faithfully, or the others who appoint them that have authority to do so. And they should be desirous to promote the welfare of the people, and not be quarrelsome, so that the parties against whom they are compelled to institute an investigation may not suspect that they are doing this for their injury; for if they are turbulent, or do not possess the good qualities which we mentioned above, the investigation which they make will not be valid.

They should also be diligent in finding out the truth as rapidly as they can, and prudent and zealous in all their inquiries, until they learn the whole truth or as much of it as can be ascertained. We also decree that no member of the clergy, nor any man belonging to a religious order—even though he may be of good reputation—can act as an examiner in a case involving sentence for a crime, for the reason that no one, through an investigation of his, should be punished either in person or in property; nor can he serve in any other investigation, except such as pertain to matters ordered by the law of the Holy Church; nor should he act in any secular dispute, except one submitted to his decision by the consent of both parties, and if he does otherwise he will violate the law of the Holy Church, on account of which he may run the risk of losing his orders, besides placing obstacles in the way of secular justice, for if they do not conduct investigations according to law, those invested with judicial authority would not be able to punish them, as they would laymen.

LAW V.

How Many Examiners There Should Be.

We desire to show here how many examiners there should be to conduct an investigation; and we decree that whenever one is to be made, whether this is done by the command of the king, or by that of some other person who has authority to do so, two examiners, at least, and one clerk, shall be appointed. We decree that this shall be done in order that investigations may be more faithfully and thoroughly made, and that no suspicion may arise against those who conduct them, and also that they may the better remember to inquire into such matters as they think are necessary in order the more certainly to ascertain the truth. Where, however, a dispute arises between certain persons concerning boundaries, or with regard to any other matter whatsoever which does not involve the rights of the king, and the parties agree to have it investigated and each of them chooses an examiner for himself, the king should appoint a third. If, however, both parties agree upon one examiner, the king should grant permission for him to act.

LAW VI.**No One Can Be Excused from Acting as an Examiner, Except for the Reasons Stated in This Law.**

No one can avoid serving as an examiner, when the king, or any of those who have authority order him to do so. Wherefore we decree that the parties whom the king commands to act as examiners shall obey, and that no one can offer any valid excuse except that of illness, or where he is badly wounded, or by reason of some enmity which he cherishes on account of which he may be justly feared. For, in a case of this kind, the king should advise him whom he ordered to make the investigation or attend to some other matter which concerns the person of his lord, not to act, for the reason that it might result in injury to his said lord. Where anyone is not willing to serve, and offers none of the excuses aforesaid, we order that he be punished as the law of this our book directs, which law treats of those who refuse to obey the commands of the king, or do what he orders them, when they have the power and can give no lawful excuse.

We also decree, that persons who are selected by councils of cities and towns to be examiners cannot refuse to serve, unless they are ill or badly wounded; or because of some important suits which they have; or on account of business which they are required to transact by order of their lords. Where anyone refuses to serve and offers none of the above mentioned excuses, we order that he pay a hundred maravedis to the council, on account of his contempt for the command of the king, and for the reason that he was not willing to suffer inconvenience for the benefit of his council.

LAW VII.**Who Should Pay the Expenses of Examiners.**

We desire to show here from what source examiners should obtain their expenses, while they are making investigations, and we decree that whenever an investigation is made, by order of the king, concerning some illegal act committed in any country or in any other portion of the same, or with respect to any district, or any particular fact, as we stated in the laws of this Title, the king must pay said expenses; but where the investigation is made by agreement of both parties, we decree that they themselves shall pay said expenses. Where examiners appointed by councils make an investigation, the council must pay them their expenses. We decree that the same rule shall apply to examiners appointed by the king to determine certain boundaries, or when they act as surveyors, and take measurements by order of the Court of the King, then the parties should pay them their reasonable expenses, according to the nature of the case, and the standing of the man who has to do the work.

LAW VIII.**How Examiners Should Be Honored and Protected.**

Examiners appointed to ascertain the truth of the matters we have mentioned in the preceding laws are worthy of honor. We also decree that they shall be protected that they may safely pursue their investigations, as is their duty, and they were ordered to do. We decree that they shall be honored and protected in the following way, namely; those sent by the king to conduct an investigation in any district, or who make it in the place where he is at the time, should be honored and protected just as the judges of his court

are; and if anyone should kill them, wound them, or subject them to dishonor, he shall be punished in the same way as those who molest said judges.

The examiners appointed by the king to investigate provinces and the suburbs of cities, should be honored in the same way as the chief *adelantados* of those localities, and as the chief magistrates of those districts. Moreover, we decree that the examiners appointed to investigate cities and towns, shall receive the same honor and have the same protection as the judges of those districts; and anyone who subjects to dishonor, wounds, or kills any of the above-mentioned officials shall receive the same penalty as those who act in this way towards said judges.

LAW IX.

What Examiners and Clerks Should Observe and Do.

The things which examiners and clerks should observe and do are the following. They should make oath in the hands of the king, if he appoints them by virtue of the authority he has over them, or upon the Holy Gospels, if he orders another to appoint them, or where others who have authority to do this, as we have stated above; and they should swear that they will conduct the investigation faithfully, and that, neither through love or fear, nor for the sake of any gift donated to, or promised them, they will change anything, or add to, or take from, what they truthfully ascertain; and that they will not fail to put such interrogatories as will better enable them to learn the truth, as we stated in the Title concerning Witnesses. They should not warn anyone to be on his guard against the matters which they learned during the investigation and by means of which he may receive injury; nor should the investigation be made by men who are disreputable, or liable to suspicion, or enemies of those against whom the investigation is made.

Moreover, the examiners should swear the clerks, if they have not already been sworn by the king, to take down faithfully the statements of those who testify during the investigation, not changing anything which they said, and they should take their oaths according to the way in which they are sworn, as above stated. They should also cause those to be sworn who come to testify in the investigation, as we have stated in the Title concerning Witnesses. But after they have taken the oath, each one of them should be examined separately, and after each has been questioned, and declares that he has nothing more to say, he should be forbidden by the oath which he took to reveal anything he stated during the investigation to any man in the world, until the record of the investigation has been read. The investigation should be made within three days, or, at the latest, within nine days, from the time when the parties receive the letter or order and reach the place where it is to be made; and they should deliver it to those who are to conduct the investigation, and this is understood to apply to examiners appointed to investigate cities and towns. But where the king orders an investigation to be made, or commissions anyone to conduct it, it should be made within the time which he himself appoints either orally, or by letter. The report of the examiners should be sent closed and sealed, with the letter by which the king authorized them to conduct the said investigation enclosed in it. Where the letter of the king was an open one, they should also send it with the report of the investigation by such a man, or so securely, that it may safely come into the hands of the king. When an investigation is made on the complaint of any person against certain men, or by agreement of the parties, they should be summoned to come and hear it.

LAW X.**What Notaries Can Conduct Investigations.**

Examiners should be careful when they have to conduct an investigation not to do so with the aid of any other notaries except such as we shall mention here; for if they act otherwise they will commit an error by which they may be rendered liable to suspicion; and perhaps some difficulty may arise which will prevent the truth of the matters concerning which the investigation is made from being ascertained, through their divulging what they intended to keep secret. Wherefore we decree that when the king sends any persons belonging to his household to make an investigation, they should not make it along with any other notaries but those attached to the Court of the King, although they may not be natives or residents of those places where the investigation is to be made. But when the king sends written authority to anyone to make an investigation, he should select such a notary to assist him that he can well and faithfully perform his task, and those who make investigations by order of the chief *merino* of a district, or of any other persons who have authority to order this to be done, should select such notaries to conduct it with, as we specified in the Title concerning Witnesses.

LAW XI.**The Names and Statements of Those Who Testify During an Investigation Should Be Shown to the Parties Whom It Concerns.**

When an investigation is made in any of the ways we mentioned above, the king or the judges should give a transcript of it, including the names of the witnesses and their statements, to the parties interested in said investigations; in order that they may defend their rights by testifying against the statements or evidence of said witnesses, and make use of all the defenses which they may have against other witnesses. Where, however, the king or anyone acting for him, orders an investigation to be made in a case of the theft of army rations, then neither the names nor the testimony of the witnesses in the investigation shall be given to those against whom it was conducted. This should also be observed where the parties agree that their dispute may be settled by means of the investigation, and that neither the names of the witnesses nor their testimony shall be revealed.

LAW XII.**What Punishment Examiners Deserve Who Do Not Conduct an Investigation Lawfully.**

We desire to show here the penalties which examiners deserve who do not conduct investigations faithfully and lawfully, as the laws direct. And this we decree on account of the many injuries and evils which we find have happened, and may happen, through investigations which are not conducted as they should be. For which reason we order that examiners, of whatever kind they may be, must take special care that investigations are made faithfully and without altercation, and without paying any attention to the love, hate, or fear of anyone; or to any request or reward which may be given, or promised them, on account of which they may fail to conduct the investigation as we have stated; for any persons found to have conducted it in any other way, by making changes in the statements of those who are acquainted with the subject of inquiry; or by advising them to say something which they did not know; or by warning the party, or parties against whom the proceed-

ing was instituted; or by interposing any obstacles of any kind whatsoever, so that by means of them the truth can not be perfectly ascertained; in addition to the disloyalty and wrong of which they are guilty toward God and the king, and the party against whom the investigation is made, we decree shall suffer such a penalty in person and property, as he has suffered or is liable to suffer, against whom such a false investigation has been conducted.

TITLE XVIII.

Concerning Written Evidence by Means of Which Cases Are Proved.

Antiquity is something which makes men forget past events. For this reason it was necessary for writing to be invented, so that what had been formerly accomplished might not be forgotten, and that men might, by means of it, become familiar with those things which have been settled, just as if they had been recently done; and especially, in order that contracts, agreements, and other transactions which men carry out or enter into with one another every day, may not become doubtful, and may be observed in the manner agreed upon. And since so much benefit is derived from written documents which are advantageous at all times, and cause what has been forgotten to be remembered, and confirm what has been recently done, and point out the way by which what is to come may be accomplished; it is just that such documents be drawn up faithfully and without fraud, so that they can be easily understood and be complete, and this should especially be the case with anything out of which a controversy may arise among men.

Wherefore, since in the preceding Titles we spoke of witnesses and investigations, which is one of the kinds of testimony given orally, we desire to speak here of all instruments in writing of every description whatsoever, from which evidence or verification may be obtained in court, which is another kind of testimony called dead speech. In the first place we shall show what writing of this kind is; what benefit is derived from it; how many kinds it is divided into; how these should be made; who can offer them and determine them; what force they have; and which are competent and which are not.

LAW I.

What a Written Document Is, What Benefit Is Derived From It, and Into How Many Kinds It Is Divided.

A written document, admissible in evidence, is any instrument drawn up by the hand of the notary public of a council, or sealed with the seal of the king or that of any other person of distinction who is worthy of being believed, and great advantage is derived from it for it is evidence of matters which have transpired, and proof of the contract concerning which it was drawn up. There are many kinds of such instruments, for it may be either a grant by the Pope, or by an emperor, or the king, sealed with his golden or leaden seal, or signed with some ancient mark which was customary at that period; or it may be a letter of the aforesaid lords, or of any other person of rank, impressed with a seal of wax.¹

There is another class of letters, which every man can send sealed with his seal, and these are competent against the persons who have written them only when they are written and sealed by their orders. There is another kind of instrument which everyone writes with his own hand, and which is without a seal, which is, as it were, a sort of evidence, as will be shown hereafter. There is also another kind of document, called a public instrument, which is drawn up by the hand of the notary public of a council.

¹ These instruments are such as are judicially taken notice of by all tribunals at the present day, and of which, with the occurrence of public festivals, weights and measures, events of common notoriety and of national importance, it is not necessary to introduce proof.—Ed.

LAW II.

What a Privilege Is, and How It Is Granted.

A privilege means a law given or granted by the king especially to some place or to some man, as a matter of kindness and favor. It should be granted in the following way, according to the custom of Spain; in the first place, it should be begun in the name of God, and afterwards good and proper words should be used, and such as are applicable to the matter with respect to which it is conceded. It should also state that the king, together with his lawful wife and any sons that he may have by her, or by any other wife whom he had married ordered it to be granted, mentioning first the eldest who is to be his heir, and afterwards the other male children, one after another, according to their ages; and if there are no sons the oldest daughter, and after her the other daughters, as we stated in the case of the sons; and if there is neither son nor daughter, naming his brothers, at first the eldest, and then the next, as we specified in the case of sons; and if he has no brother, naming the nearest male relative, as is stated in the Title concerning Lands. The sons, brothers, and other near male relatives are mentioned in order that, although all of them are bound to observe the privilege, they may do so the better for this reason.

After the king has enumerated these, he should state that he grants to the party or parties mentioned in the privilege a certain gift of land or other property, and grants a certain exemption, or a certain fuero, or a certain release, or establishes certain boundaries, or confirms certain acts performed by his predecessors, or which they maintained in their time. When there is a grant of real estate, all its boundaries should be set out as well as the terms of the grant. Where an exemption is granted, it should be stated in what way the party is freed from the performance of what he did, or should do, according to law. Where it concerns a fuero, the reason for making it should be given, as well as the change that is made. Where a release is made, the way in which it is done, as well as the cause should be mentioned, and it should be stated that it is made in order to grant a benefit, or a favor. Where it relates to the establishment of boundaries, the places which are the subject of controversy should be referred to, and the way in which he makes the division from that time forward. Where the privilege is one of confirmation, it should be stated that he had examined the privilege of Such-and-Such king, or of Such-and-Such a man, which he desires to confirm, and everything should be included in the instruments of confirmation.

After everyone of the privileges aforesaid has been reduced to writing, in the manner we prescribed, it should be stated that the above-named king, along with his wife and sons, as we mentioned above, grants and confirms said privilege, and orders it to be binding, firm, and established forever. After this he can insert any malediction which he may desire against those who oppose or violate said privilege, and order that they shall pay as a fine an amount equal to whatever the king who granted or confirmed the privilege considered proper, and ordered to be especially stated in the privilege itself; and this imprecation an emperor or a king can make in secular matters in which he is concerned, because he occupies the place of God on earth for the dispensation of justice. When, however, the question is one relating to the confirmation of any privilege which the king does not intentionally desire to grant; or where he is not aware why it was granted or confirmed, he should say that he confirms the acts of the others, and orders them to be observed just as was done in the time of those who made the grant; and it should also be stated in the privilege that it is granted by order of the king; and the place, the day, the month, and the year in which it was done should be

given, and if any particular event reflecting honor upon the king and upon his sovereignty had happened during that year it should be included.

After all this there should be inscribed in the grant the names of the king, the *infantes*, and the counts who are his vassals who confirm it, including those of any other sovereignty as well as his own. And a flourish, in the shape of a circle, should be made, and in the middle of it should be written the name of the king who bestows the grant, and outside of the latter should be signed the name of the standard-bearer or of the royal steward, by way of confirmation. And on both sides of this should be written the names of archbishops and bishops, and of the nobles of the kingdom, and after these the names of the chief magistrates of the provinces, and of those who dispense justice, and those of the notaries in the lines under the circle, and at the end of the privilege the name of the clerk who drew it up, and the year of the reign of the king who ordered the said privilege to be confirmed.

LAW III.

What Should Be Done After the Privilege Has Been Reduced to Writing.

The clerk should carry out what we have stated in the preceding law, and after he has done this, as we have explained in the same law, he should call the notary to see if it has been done in accordance with the memorandum which the king or the notary gave him, or with the directions communicated to him orally. If the notary finds that it has been drawn up as he was told or ordered to do, he should return it to the clerk who drew it up, so that he may record it in his book, and take it to the chancery, and place upon it a silken cord, and seal it with a leaden seal. And we hereby declare that a silken cord is attached to a privilege, and that it is sealed with lead to let it be known that it is granted to be secure and permanent forever, where it is not lost for some lawful reason, as we shall explain hereafter.

LAW IV.

In What Way Documents Should Be Sealed With Lead.

A leaden seal and a silken cord can be attached to other documents which are not called privileges. These are drawn up in the following manner, namely: first, they should begin "In the name of God;" and afterwards state that whoever sees the said document shall learn and know that the king, who ordered it to be drawn up, conveys certain real estate, or gives certain property, or makes a certain release, or grants a certain exemption; or, where he makes a contract or agreement, it should be set forth with whom it is made, and all other matters should be included, as in the case of a privilege belonging to any one of the different kinds we have above mentioned. The king should not, however, mention in it his wife or his sons, nor should he include any malediction or any confirmation of such as we mentioned in the law concerning privileges, unless it is a paper evidencing an agreement made with the king or with some man of high rank; for, in instruments of this kind, those matters upon which the parties agree should be inserted, according to the terms of the said agreement or contract.

Moreover, in none of the documents aforesaid should a circle with a flourish, or any other mark whatsoever be made, but a penalty should be inserted in it according to the wishes of the king. Where the document relates to an agreement or contract, as aforesaid, no penalty should be inserted in it except such as has been agreed upon, and in every one of these documents it should be stated that it is made by the command of the king, and the place,

the day, the month, and the year in which it was executed should be mentioned, as well as the name of the clerk, and the year of the reign of the king who ordered it to be drawn up. It should also be recorded, as we stated was the case with privileges, and given to the king, who should present it with his own hand to the party entitled to receive it.

LAW V.

What Documents Should Be Drawn Up on Leather Parchment, and Which Ones on Cloth Parchment.

Other documents should be sealed with wax, and with a pendant seal. These are of many kinds, some are written on leather parchment, and others on cloth parchment.¹ A distinction, however, exists between these, for some should be drawn up on leather parchment, as when the king bestows the office of *merino*, or that of *alcalde*, or that of *alguazil*, or that of a person authorized to administer oaths; or removes some tax or toll for the term of a party's life; or where the king pardons anyone by an instrument in writing; or where a lease is made to him or to some other person by his order; or where an account is rendered, or an agreement entered into concerning actions at law, or a contract relating to some dispute or any other business which noblemen have to transact with one another; or where other men have matters to attend to relating to contracts made with the king with regard to labor, or other things which they have to observe in his country or in his dominions; or respecting letters which the king gives to any persons in order that they may traverse his country in safety and security with their flocks, and their property; or with reference to petitions circulated in his kingdom; for all the above mentioned documents, and others similar to them, should be written upon leather parchment, as we have stated. Those which should be written upon cloth parchment are the following, namely: such as grant permission to remove prohibited property from the kingdom; or those despatched with orders to different councils which are commanded by the king either to arrest certain men, or to collect certain sums of maravedis; or for security; all such as these should be written on cloth parchment, as well as all others similar to them.

LAW VI.

In What Way an Instrument Should Be Drawn Up When the King Appoints Anyone Adelantado or Judge.

When an *adelantado*, a chief magistrate, an admiral, an *alcalde*, a judge, or an official empowered to administer oaths is appointed by the king, the commissions given them should be drawn up in the following manner: "Know all councils and all men who see this instrument, that the king who ordered it to be executed appoints over his entire dominions, or in certain provinces, or especially in some district, So-and-So his *Adelantado*, or his *Merino*; (or grants him authority over some of the other localities aforesaid), and commands his subjects to behave toward him as they would toward a man invested with that particular authority; and in order that no doubt may arise with respect to this, he has ordered him to be given the said open letter impressed with his pendant seal of wax."

¹The "cloth parchment" mentioned in the *Partidas* was paper introduced by the Spanish Moors, for which the ancient city of Xativa was famous during the Moslem domination, and where was situated the first establishment for its manufacture in Europe. For many ages employed by the Chinese, who made it of silk, the Arabs invented processes by which they utilized linen and cotton for that purpose. Paper was common at Mecca as early as 710, but was practically unknown to Europe, outside of the Peninsula, for seven hundred years afterwards. A manuscript of the eleventh century, found in the collection of the Escorial, shows that it was used there at that time. Paper was not made in England until 1690.—Ed.

LAW VII.**In What Way a Letter Should be Drawn Up When the King Sends an Adelantado or Judge With Authority Over Any Country.**

"Don Alfonso, by the grace of God, King of Castile, etc., to the Council, Judges and good men of Seville, greeting: Know ye that I send to you as your judge, Ferrand Matheos, who is a good and learned man, in whom I trust, and who is suitable for you; and that I confer upon him full authority to hear, decide, and determine according to law, all cases and disputes arising between the people of Seville, and within its district; whether they are cases involving punishment by the shedding of blood, or of any other description whatsoever. Wherefore, I command you to accept him as your judge, and to obey him in all matters relating to his office, and not oppose him; for any one who acts otherwise, shall be responsible to me with his person and with all his property; and in order that this may be certain, and that no doubt may arise, I have given him my letter sealed with my seal."

LAW VIII.**How a Letter Should Be Drawn Up When the King Appoints Anyone Notary Public of a Town.**

"Know all persons who see this letter, that We, Don Alfonso, by the grace of God King of Castile, etc., hereby appoint Velasco Iuáñez, Notary Public of Segovia, and having sworn him to perform the duties of his office well and faithfully, not only with regard to the contracts which men make with one another, but also concerning wills, and the transactions arising in lawsuits which he has to reduce to writing in the presence of the court; as well as all other matters relating to this office; and, moreover, above all things in the world, to protect our service and our sovereignty. And we invest him with this public office along with a writing case and a pen, and also we confer authority upon him to make use of said office in a public manner. And we command that whatever instruments he may draw up hereafter in public practice, shall be valid and accepted throughout our entire dominions, as those made by the hand of a notary public should be; and in order that no doubt may arise in the matter we have given him this letter, sealed with our waxen seal."

LAW IX.**How a Letter of Legitimacy Should Be Drawn Up.**

Kings make the sons of good men legitimate in order to show them grace, and a letter granting this should be drawn up in the following way: "Know all persons who see this letter, that Remon Perez, came before Us, Don Alfonso, by the grace of God King of Castile, etc., and asked us as a favor, to make legitimate his son Remondo, whom he had by Doña Perona, to whom he was not married. Wherefore We, desiring to show him grace, do comply with his request; and, by this our letter, make the above named Remondo legitimate, and grant him the power to inherit the property of Remon Perez his father above mentioned, both whatever he is possessed of at present and may acquire hereafter, whether the said Remon Perez dies testate or intestate. Moreover, we grant that the aforesaid Remondo shall be treated with all the honor that a legitimate son should, and can have; and that no disability whatever shall attach to him because he was not born of a lawful wife, nor that he be treated with less respect for that reason. And in order that this act of legitimacy may be secure and permanent, and that no doubt may arise concerning it, We have given him this letter sealed with our leaden seal."

LAW X.**How a Letter Should Be Drawn Up When the King Exempts Anyone From a Tax.**

The king grants some persons exemption from a tax, and the letters by which this is granted should be drawn up in the following manner: "Know all who see this letter, that the king exempts So-and-So from the tax of March; or from that of Saint Martin's day; or from every tax; or from every public work; or from money; for his entire life." Also that he exempts him and his wife and children, or certain of his relatives—according to the favor which the king desires to show him—and he should mention that he grants him this exemption through kindness; or on account of some service which he has rendered; or at the request of some person who has asked this for him; and in order that it may be certain and no doubt arise with regard to it, he should state that he orders this letter sealed with his waxen seal, to be given to him. A letter of this kind should, however, be sealed with a silken cord.

We also decree that money must be especially mentioned in the letter when the king desires to favor a party by exemption from taxation upon it; for, although he may state that he exempts him from all taxes, he cannot avoid paying the tax upon that, unless it is particularly mentioned. Nor, moreover, will he be exempt from such taxation by a letter of this kind except during the life of the king that granted him the said exemption, unless it is stated to be perpetual; for money is a tax which the king collects in his dominions separately, as a mark of acknowledged sovereignty.

LAW XI.**In What Way a Letter Granting Exemption From Tolls Should Be Drawn Up.**

The king has power to exempt anyone from toll, and the letter granting it should be drawn up in the following manner: "From Us, the king, to all Collectors of tolls, to all men of the kingdom who see this letter, greeting: Know ye that we exempt So-and-So from toll on his own property in all our kingdoms. (He should also give the reason why he grants this exemption, as we stated in the preceding laws, or at whose request it is done.) Wherefore we decree that no one shall be so bold as to hinder or oppose him, on this account, without paying him by way of fine, as much as the property is worth;" (and whatever penalty the king inserts in the letter).

By an exemption of this kind it is not understood that he can remove articles which are forbidden to be taken from the kingdom, unless this is especially mentioned in the letter; nor is it understood that the king exempts him from tolls in other places than those specified in the grant; nor that, by means of such a letter, anyone will be exempt from paying the king his dues for property forbidden to be removed from the kingdom, unless this is stated in the agreement entered into by the king. The letter should be sealed, as we mentioned with regard to the other granting exemption from a tax.

LAW XII.**How a Letter Should Be Drawn Up When a King Pardons Anyone for Some Offense Which He Has Committed.**

When a king pardons anyone for an offense which he has committed by reason of which he is liable to punishment in person or property, the letter should be drawn up in the following manner: "Know those who see this

letter, that the King pardons Such-and-Such a person, (mentioned in said letter,) for such-and-such offense for which he is liable, and that he discharges him from all liability for the same, treachery or treason excepted; and that he orders that no one dare to demand anything from him on this account." But it is not understood that, by a letter of this kind, a party can avoid answering in court, according to law, those who complain of him; for the king, by such a letter, only releases the said party from criminal prosecution; nor, on the other hand, is he released except from punishment for the offence especially mentioned in the letter for which the king pardons him; and it should be stated therein whether he pardons him at anyone's request, or on account of some service which the party who is pardoned has performed, or which others have performed for him. This letter should be sealed, as we stated in the preceding laws.

LAW XIII.

How a Letter Should Be Drawn Up Concerning a Lease Made by the King.

Where a king leases the customs, or ports, or salt-mines, or anything else from which he derives revenue, the letter should be drawn up as follows: "Know those who see this letter, that the King, who ordered it to be drawn up, rents to So-and-So such-and-such customs, or such-and-such ports, or such-and-such salt mines, or such-and-such income which he has, in such-and-such a place, or from such-and-such sources, for so many maravedis every year, or for all time;" and he should mention the dates at which the maravedis are to be paid, or what, and how much the lessee should take; this, however, should not be understood to refer to matters other than those relating to the duties to which the king is entitled and which belong to the lease, according to the terms in which the property is rented. But so far as duties arising from other valuable property and which are not a part of that above mentioned are concerned, they should belong to the king, unless otherwise specified in the lease. It should also state that the lessee shall receive said duties in safety and security, at the time mentioned in the lease, having paid the maravedis, or complied with the contract which he made with the king.

LAW XIV.

In What Way a Receipt Should Be Drawn Up for Those Who Have Accounted to the King for Property of His Which They Held in Their Possession.

Those who have possession of the property of the king frequently account to him for the same, and wish to have a receipt for it. And where the king orders this to be given, it should be drawn up on the following manner, namely: "Know all those who see this letter, that the king received an account from So-and-So, for a certain number of maravedis, for the tax of St. Martin's day, or for such-and-such a sum of money, or of such-and-such a tax, or for such-and-such revenue which he collected, and that this is a receipt for the same; and in order that no one may again demand the said account of him, and that he may not be required to pay it a second time, he is given this open letter." Although he may hold such a document, it will not release him if he appropriated any property which he should not have done, or collected a larger sum of maravedis than he gave in his statement, from being asked for them and being compelled to account for the same; for this paper is not a receipt, except for what is especially mentioned in it and concerning which the party gave a true account.

LAW XV.**In What Way a Letter of Agreement Made by Anyone Should Be Expressed and Who Should Draw It Up.**

Noblemen and knights, or other men who frequently make stipulations among themselves concerning disputes arising among them, or relating to other contracts which they enter into for their own benefit which may be for the service of the king, come to terms, and ask as a favor of the king that it may please him to grant his permission and order his seal to be impressed on the instrument which they have caused to be written to evidence said agreement; and, if he does this, he should state at the end of it that he gives his consent, and orders his seal to be impressed upon the same, at the request of the parties; and one of the secretaries of the king should draw it up. But where those who enter into such an agreement, ask as a favor of the king that he order the instrument to be drawn up, his secretary should then do so in the following manner: "Know all those who see and hear this instrument, that the parties mentioned therein came before the king concerning a dispute which they had with regard to such-and-such a tract of land, or claim; or relating to such-and-such a contract which they had entered into with one another, and ask of him the favor to give his consent to said agreement or contract."

The entire transaction, according to the terms of agreement or contract which they entered into, should be described in the instrument, and it should also be stated therein that the above-named king executes and confirms said contract or agreement, and commands that it be as valid as if what is above stated were included in said instrument, and in order that no doubt may arise concerning the same, that he orders his seal to be attached thereto.

LAW XVI.**How Letters Concerning Structures Ordered by the King to Be Erected, Should Be Drawn Up.**

Where the king orders castles, bridges, ships, or any other structure whatsoever to be built, two articles should be drawn up, divided by A, B, and C. One of these the king should keep and the other the party who is to do the work, in order that the king may know what he has to pay, and the other party what he has to do, and they should be worded as follows: "Know all who see this article, that the king agrees with such a master or with such a man, to build a certain structure, in a certain place, and in a certain way;" and all he has to do should be included in said article, as well as the time within which it is to be done; and it should state that the king is to give so much money, or such-and-such compensation in payment for the work; and if he who has to build, or complete the structure imposes any penalty upon himself, it should be inserted in the article and be enforced, if he does not complete the work, as stated therein, the king having paid the money, or given the compensation agreed upon. These documents should be drawn up by the king's secretary, or the clerk of the Council, and witnessed and sealed with the king's seal. Where a document is drawn up by the clerk of the Council and the king makes a grant in it, this should be written by the hand of one of his secretaries.

LAW XVII.**In What Way Instruments Relating to Contracts Which Parties Have Made with the King for Watching the Ports Should Be Drawn Up.**

Kings frequently order seaports to be guarded in order that property, forbidden to be removed, may not be taken out of the kingdom, or that ships by whose means his sovereignty might suffer injury may not come there; and this also applies to other places liable to suspicion to enable men to travel securely through them. Those whose duty it is to maintain this watch, do so for a certain salary, they should have a letter of authority, and the secretary must draw it up in the following terms: "Know all those who may see and hear this letter, that the king appoints So-and-So to guard such-and-such a seaport, or such-and-such a district—according to the circumstances of the case—in order to prevent any prohibited property from being removed, or any ship from arriving there by means of which injury may result to the country; and, moreover, that he may protect said seaport, so that those who pass through it may go safe and secure with all their property, unless it is such as is forbidden by the king to be removed; said persons paying those duties which they are required to pay, and that, in consideration of this guard which they have to maintain, the king gives, as compensation, so much money, or so much revenue." Where the king complies with what he agreed to, and either through the guilt, negligence, or fraud of said guard, any damage results, he is bound to pay it.

LAW XVIII.**How Letters of Recommendation Ordered to Be Given by the King Should Be Drawn Up.**

A king sometimes grants letters of recommendation and protection to men of other kingdoms, and a letter of this kind should be drawn up as follows: "Know all who see this letter, that the king recommends, and takes under his protection, Such-and-Such a man and whatever property he has, and orders that he be allowed to travel safely and securely through all the parts of his kingdom with merchandise and with whatever he takes with him; so long as he pays the duties which he should pay, and does not remove property forbidden to be taken from the kingdom. Let no one dare to do him wrong, or employ violence or injustice against him, or oppose or arrest him, except for his own debt, or for some security which he himself has given, for anyone who does this shall pay to the parties who received the wrong the penalty which he ordered to be inserted into the letter, to an amount equal to double the damage sustained."

There is another kind of letter of recommendation which the King sometimes gives to men of another kingdom, who are of superior rank; as, for instance, where he recommends them, and takes them, their property, and everything they possess under his protection, and states that he will punish to the extent of his power anyone who does them wrong, or subjects them to violence, or treats them with injustice. There are other letters which the King sometimes gives to men belonging to his kingdom for this same purpose, except that he does not order the assurance of his recommendation or protection to be inserted therein.

LAW XIX.**In What Way Letters Ordered to Be Issued by the King to Assure the Safe Passage of Beasts Should Be Drawn Up.**

Some owners of beasts ask the King, as a favor, to give them his letters in order that they may travel more safely, and obtain pasturage in his dominions, and that no one may cause them any injury. Letters of this kind should be drawn up in the following way: "Know all who see and hear this letter, that the King orders that the beasts of the party, or parties to whom this letter is given shall pass safely and securely through all parts of his dominions, and feed on the grass, and drink the water, not causing any damage to crops, vineyards, or any other place marked off by boundaries, and paying the duties which they should pay; and let no one dare to place any obstacles in their way, or oppose them, and if anyone does so he shall pay a fine to the King equal to the amount of the damage, and double that amount to the party making complaint."

LAW XX.**In What Way Letters Ordered to Be Issued by the King Permitting Horses and Other Prohibited Property to Be Removed from the Kingdom Should Be Drawn Up.**

Letters granted by the king giving permission for the removal of horses or other prohibited property from the kingdom, for any length of time whatever, should be written on parchment or cloth, and worded in the following manner: "From the King to all collectors of tolls, and to all persons who shall see this letter, be it known, that he orders So-and-So to remove from the kingdom so many horses, or such-and-such prohibited property, and let no one dare to oppose him on account of his removal of said property from the kingdom; and anyone who does so shall be responsible in person and in all that he possesses." It should also be stated whether the letter was issued for only one occasion and will not be valid for any more, but must be torn up at the boundary of the kingdom; and where it is for a longer period it should be so stated in the letter, and beyond that date it will not be valid. In some letters of this description in order to show greater favor to those who make the request it is stated that they are not required to pay any tolls.

LAW XXI.**In What Way Letters Ordered to Be Issued by the King Authorizing the Circulation of Petitions in His Dominions, Should Be Drawn Up.**

Men circulate petitions, accompanied with letters of the Pope or of an archbishop, for the benefit of churches and hospitals; or to ransom captives; or for other purposes of mercy; and they ask letters of the king to grant them permission to beg through his dominions, and these should be drawn up as follows: "Know that Such-and-Such a bishop, abbot, minister, prior, or any other person whomsoever, having asked as a favor of the king permission to circulate a certain petition through his dominions, he, to grant a favor and benefit to the party or establishment that requests it, deems it proper, and orders that a petition be circulated that those who desire to give alms for such a purpose may give them; and that he forbids anyone to place obstacles in the way of said parties, or oppose them; for if anyone does this, it will be a source of sorrow to him, and that the king will hold him, with all his possessions responsible on account of it." Where he had previously forbidden a petition to be circulated for the benefit of a crusade, or for any other cause or purpose, he should state in the letter that no obstacle should be placed in its way for this reason.

LAW XXII.**How a Letter Should Be Drawn Up by Which the King Orders Certain Councils to Perform Some Particular Act.**

The king frequently sends his letters to councils, in order that they may give a good reception to some distinguished man when he visits their country and do him honor; or that they may give transportation to one of his brothers when he sends him somewhere on a particular mission; or that they may keep certain agreements; or come to his court; or join the army; or with reference to any other matters which may arise. Letters of this kind should state that the king informs them that such-and-such things have happened—and he should describe the entire transaction in the letter—and also that he orders them to do what he considers proper according to the circumstances of the case, and that he will inflict such punishment as he may desire upon whomsoever does not do what he commands.

LAW XXIII.**When the King Sends Anyone to Collect the March Tax, or Any Money, or Any Produce, or to Make a Poll, How the Letters Which He Orders to Be Issued Should Be Drawn Up.**

The king frequently orders certain persons to collect the tax due in March, or money, or the tax due on St. Martin's day, or other taxes, or produce or to make a poll and we decree that the letters necessary for the said collectors of taxes, or the maker of the poll, should be drawn up in the following manner: "From the king to a certain Council, or to those who see this letter, in which he informs them that he orders a certain man, or certain men, to collect such-and-such a tax or produce; or to collect certain maravedis; or to make a poll in such-and-such a place; and orders that the tax and the maravedis aforesaid shall be paid to said men, and that this be done within a certain specified time mentioned in the letter, or that they assist him in making a poll, as the letter directs. And that he orders security to be taken from those who do not do this and held; and that whoever resists taking the said security shall be punished as the king thinks proper and just; and it can sometimes be inserted in the letter, if the king orders this to be done, that when the parties are not willing to redeem the security, it shall be sold. When the authority of said letter is not sufficient others can be issued for the purpose of making valid purchases of certain specified parties who may buy said property.

LAW XXIV.**How the Letters Which the King Sends, Ordering Certain Persons to Make an Investigation or to Arrest Certain Malefactors, Should Be Drawn Up.**

Men frequently commit unlawful acts concerning which the king has to make investigations, as, for instance, when they rob, or break into churches, or steal on the highway, or violate women, or do any of the other things mentioned in the Title on Investigations, which the king, by his letters, orders them to inquire into; or commands that those of whom complaint is made shall be arrested, in order that they may appear before him. Where a letter is issued authorizing an investigation, it should be drawn up in the following manner: "From the king to those whom he orders to make the investigation. By this he informs them that, on account of a complaint which a certain man made to him regarding a crime which had been committed; or with reference to some dispute existing between certain parties, concerning which the

favor is asked of the king to ascertain the truth by means of an investigation; or on account of some other matters which have been communicated to him that he may direct an investigation to be made of them; the King commands that those of whom the examiners ask the truth shall tell it, and those who say that they saw the act in question, must state how they saw it; and those who heard it, how they heard it; and those who believe, how and for what reason they do so; and that they tell the truth in such a way that the king may not subsequently ascertain that their statements are false; and if they act otherwise that they shall be responsible for it; and that the king orders that the report of the investigation which they make shall be sent to him by them in writing, closed and sealed with their seals, and that they should also return to him the letter by which he authorized them to make said investigation." And where the letter grants authority for the arrest of those of whom complaints are made—"that the king orders the judges, or those who see or hear the letter, or whoever carries the same and shows it to the said judges to retain said malefactor, or malefactors in custody, until they give good sureties, or security to appear before the King." If, however, he does not state in the letter that they shall give sureties they will not be obliged to do so.

LAW XXV.

How a Safe Conduct Should Be Drawn Up.

Messengers of the king, and other parties frequently travel to places outside of his dominions, and require letters of safe conduct. These should be drawn up in Latin in order that persons in other countries may understand them, and be worded as follows: "To kings, counts, and other eminent men, outside the kingdom, who may see this letter, by which they are informed that the King sends a certain man on a mission and asks them that, when he passes through their country or their towns, they give safe conduct, while going and coming, both to himself and his retainers, and to all his property, and for whatever kindness or honor they show him he will be very grateful."

LAW XXVI.

Who in the Household of the King Can Grant a Letter or Privilege.

No one in the household of the king or in his court, should issue letters except such as we shall mention hereafter. In the first place, we decree that no letter relating to a favor or act of mercy which the king grants to a party, can be issued by anyone except himself or someone of those persons who have power to do so acting under his order, as, for instance, the chancellor, or notary, or one of the other officials who have authority to render decisions in court, as *adelantados* or judges. We decree, moreover, that no one shall order privileges to be granted or confirmed except the king himself; nor should those made by his orders be granted to another, except by the hand of the sovereign. The wise men of the ancients deemed this proper in order that no mistake might be made in the matter, and that those who receive the privileges and favors of the king should be grateful to him who has the power to bestow them, and from whose hands they receive them. We also decree that letters conforming to the laws of the country and decisions rendered, can be issued by *adelantados* and judges of the royal household.

LAW XXVII.**Who Has Authority to Decide Concerning Privileges and Letters, and How They Should Be Interpreted and Corrected.**

We desire to show by this law who should decide concerning privileges and letters, when any doubt arises with regard to them. Wherefore we decree that no one shall interpret a privilege involving a donation by the king except himself and the others who reign after him and as to privileges of confirmation, in which it is declared that they were still in force up to the time when they were confirmed; or until some other particular date; or that they were in force during the reign of other kings; or in which it is stated that the rights derived from the privileges of the said other kings are reserved; such as these can be interpreted by those appointed to act as judges in the countries where the said privileges were granted, in such a way that if the parties against whom they are produced deny that they are valid they can order those who produce them to prove it, and render a decision according to the evidence.

Where they are privileges in which confirmation is mentioned, reserving rights belonging to the privileges of others, and those against whom they are produced allege that they hold privileges granted previously to these; in such a case all the privileges should be produced, and carefully examined to determine which have priority, and we decree that those shall prevail which were first granted, provided they have been made use of as they should have been. If they are so doubtful that the judges themselves cannot decide the question, they should send both parties with their privileges to the king, that he may do so.

Where a dispute arises concerning other letters which are in conformity to the laws, or which the king grants as a favor, the judges before whom the parties appear should determine it, placing the best, the most just, and the most advantageous, as well as the most true and lawful construction upon them. And if any of those whose duty it is to decide acts contrary to the provisions of this law by determining any of these points maliciously and with evil intent, his decision shall be void, and he shall be considered a wicked man and a defamer, and the parties should apply to the king, in order that he may decide the doubtful point as he thinks best.

LAW XXVIII.**What Force Letters and Privileges Have, and in What Way They Should Be Observed.**

We desire to show by these laws what force privileges and letters, of every description whatsoever, have, and to state how many kinds there are, and in what way they are obtained. Wherefore, we decree, as follows: first, that some are obtained according to fuero; second, that others are not obtained according to fuero; and third that others are not obtained according to fuero, but are not obtained in opposition to it. We desire to speak in this law of letters obtained according to fuero, and we define those secured in this way to be such as the king issues, or others issue for him for the performance of some particular act according to fuero, and for this reason we decree that they shall have the force of law, and should be considered and judged without malice and without fraud, as law; and we also decree that privileges shall have the same force as laws so far as those matters for which they are granted are concerned; for a privilege means a private law and one granted especially for the benefit of some person.

LAW XXIX.**Letters Contrary to the Faith Are Not Valid, and How Letters Contrary to the Rights of the King Should Be Obeyed.**

There are letters or privileges of another kind which are contrary to fuero and law, and these can be obtained in many ways. They are either contrary to the laws of our faith, concerning which we spoke in the First Book, or conflict with the rights of the king, or with those of the people in common, or with those of some particular individual. We shall explain what force they have in each of these instances, and which should be valid, and which should not.

We decree that those which are contrary to our faith have no force whatever, nor should be accepted in any way, or considered valid. Where they are contrary to the rights of the king, those which were first issued should not be observed, for they have no force, since they may have been granted hastily through importunity, or under pressure of distress, the king not being able to act otherwise in order to avoid some great misfortune; or where he was occupied with other business, on account of which he could not pay attention to the matter; and the parties to whom the letters were sent should notify the king that they have received such letters, and that they were contrary to his rights, or impaired them, and ask him to direct them what to do; and if he sends them other letters of the same tenor, they should obey them. They should, however, subsequently inform the king that they had obeyed them, but that they were to his injury and conflicted with his rights. This they should do in order that the king may understand that they obeyed his commands.

LAW XXX.**A Letter Obtained Contrary to Law Will Not Be Valid.**

Where letters are granted contrary to the common law of any people, or to their injury, the first ones issued should not be obeyed. For they have no force because they are to the prejudice of many, but they should be shown to the king, and he should be asked and prayed as a favor to reconsider what he has ordered them to do in that letter. If, however, the king should subsequently wish that, under all circumstances, the letters should remain as they are, they must obey what he orders. When they are contrary to the rights of any particular person, as where they deprive him of his possessions without reason and without justice, or where they do him any other manifest wrong in person or in property, such letters have no force whatever and should not be obeyed until those to whom they were sent inform the king, and ask him to explain the reason why he commanded these things to be done; for every man must surmise that, as soon as the king understands the matter, he will not order the parties to obey the letters.

LAW XXXI.**A Letter Contrary to Natural Law Will Not Be Valid.**

Neither an emperor, king, or other lord, should grant a letter or privilege contrary to natural law, and where he does grant one it ought not to be valid. It would be contrary to natural law, if, by way of privilege, the property of one man is given to another, he not having committed any act by reason of which he should lose said property; except where the king had need of the same to construct by means of it, or upon it, some building or other public work, for the common benefit of the kingdom; as, for instance, in the case of

land on which a castle, tower, bridge, or some other structure similar to these, is to be erected, which will be for the benefit or protection of every one, or of some particular place. This, however, should be done in one of the two following ways: either, in the first place, by giving the owner property, in exchange; or by paying him what it was worth.

LAW XXXII.

A Letter Will Not Be Valid, Which Is Obtained by Anyone Who Was Never Required to Surrender, or Be Responsible for Property Which He Owed.

There are men who so persistently importune kings to grant them a privilege or letters concerning the matters which they solicit, that they are compelled to do so, although they are aware that they are contrary to law; and they are induced to do this, rather on account of the great annoyance to which they are subjected than from any desire they have to comply. Those who obtain such letters are impelled by malice to seek their own advantage to the prejudice of others; for there are persons of this kind who ask the king to grant them letters by which they will never be required to pay to other parties the debts which they owe them, or answer for the same in court; and because a letter of this description is contrary to natural law, we deem it proper, and we order, that the judge before such a letter is produced, shall not allow it to be admitted or considered valid.

LAW XXXIII.

A Letter in Which the King Extends the Time for the Payment of a Debt by Any Person Shall Be Valid.

Men are sometimes oppressed with poverty, so that they are unable to pay what they owe at the time required, and they ask the king as a favor, to grant them letters extending the time of payment. And for the reason that it sometimes happens that the king needs the services of such men in the army, or elsewhere; or through the desire he has to confer a benefit or favor upon them, he issues letters to them giving them time. We order that a letter of this kind shall be valid, for, although the party to whom the debt is owing may be subjected to some inconvenience on this account, nevertheless, his property remains safe, and we deem it just that he recover it, and possess it. And that he may be more secure, we decree that when a letter of this kind is granted against him and is shown to him, he can then demand a surety of the party who desires to make use of the same, binding him to payment at the time appointed by the king. Where the party who obtained the letter is not willing to give a surety, we order that the said letter shall not be valid, or prejudice the rights of the party against whom it is obtained.

LAW XXXIV.

In What Way Letters, Which Do Not Comply with Fuero, or Are Not Contrary to It, Will Be Valid.

Other letters can be obtained which are not according to fuero or contrary to it. These are such as the king issues desiring to show parties favor and mercy; as, for instance, when he conveys lands to them, or exempts them from taxes, or from service in the army, or from labor on public works, or grants them other special exemptions, by way of favor. We decree that letters of this kind have all the force of laws, and should be observed as such. However, a letter which grants exemption from service in the army, or from labor on

public works, will be valid only during the life of the king who granted it; for the reason that these are matters which are always attached to the sovereignty of the kingdom. No one should feel aggrieved by letters of this kind issued by the king, for, although he orders something to be done which may result in the injury of certain persons, they should, nevertheless, obey it and carry it out, since the king does this as a favor, and for the advantage of others; for they ought to consider that the king can do them a favor whenever he desires to, just as he did the others to whom he granted letters. Moreover, it is but reasonable and just that, since the king is bound, and has the power to show mercy, no one should oppose him in doing so, or prevent him from showing it wherever he thinks proper. Those, however, to whom the king sends letters of this kind, have certainly the right to notify him either in person, or by others, that the acts ordered to be performed are vexatious; and when they do this, the king should not take it ill; but where he considers it right that the matter remain as it is, they should obey his orders, for it is not for their wisdom, but for that of the king, to determine whether this is, or is not, lawful.

LAW XXXV.

In What Way the Letters of the King Lose Their Force.

We desire to show by this law for how long a time letters which conform to the laws of the country will be valid; and we decree that letters of this kind granted for the institution of legal proceedings, as, for instance, where a party who desires to begin a suit, or to prosecute one already begun and in which he is unable to obtain justice, asks for them, they will remain in force for the space of a year; provided that he who ordered the letter to be issued, the party who obtained it, and the party against whom it was obtained, should all be living. For where any of them dies, the letter will not be valid, unless the suit has been begun, at least, by summons; but after it has been begun in this way the letter will remain in force, in order that the case may be afterwards decided through its authority, between the parties interested or their heirs. If, however, the opponent of the party against whom the letter was obtained should obtain another in the same case, in opposition to his adversary to whom the first one was issued, and the latter neglects to make use of said letter for the space of a year, although able to do so; we decree that the first letter shall be of no effect, because the party did not use it within a year, as we have stated, and that the decision must be made according to the second. But where the letter was obtained in an appeal, or with reference to final judgment, it should, by all means, be considered valid in order to be employed by way of defense. If, however, the letter should be demanded, and the party refuses to produce it in order to use it in his defense, and he comes into court and defends himself in some other way, and judgment is rendered against him; the letter loses its effect, and from that time forward the party cannot use it as a defense, because it was not produced at the proper time.

LAW XXXVI.

Concerning Letters Obtained by Fraud.

The letters of which we have spoken can lose their force in many ways, so as not to be valid, and desiring to show this in this law, we decree as follows, to-wit: that where a letter was obtained by falsehood and by concealing the truth it shall not be valid. Moreover, we decree, that, where a party obtains a letter with regard to any matter, and his opponent obtains another in which the first is mentioned, the first will not be valid; but where no men-

tion is made of it, the first will be valid, and the second will not; and we also decree, that this shall apply where he who obtains the first letter desires to defend himself by means of it, stating that no mention was made of the same in the second letter which he obtained. If he does not state this the second letter should prevail, together with whatever was determined by means of it. Where, however, one party obtains a letter with reference to a certain matter, and his opponent also obtains one relating to the same case, and both letters are produced before a judge, and doubt arises concerning them; as, for instance, where both of them were granted on the same day, or where any other questions whatsoever should spring up, so that the court cannot ascertain which one was granted first, he should not base his decision upon either of them, but should send the case to the king to order what he thinks best. Where letters of this kind were obtained, one to be produced before one court and another before another, as soon as the judges learn of the fact they should meet, and determine which one of them shall decide the case; and if they cannot agree, they should either go, or send their letters to the king, if he is within three days' journey of that place, that he may decide for them the matter which is in doubt. If he is farther away, they should go, or send to the chief *adelantado* of the king, if he is in the country, or to one of the *adelantados* of inferior rank, to decide the question for them. What we have stated concerning the *adelantados* is understood to apply where the case occurs in any country where there are officials of this kind, but if it occurs in some other country where there are none, they should go to the magistrates who have authority to decide cases in cities or towns, that they may settle the question for them.

LAW XXXVII.

Letters Obtained by Fraud Are Not Valid.

There are still other ways, than those we mentioned in preceding laws, by which letters may lose their force. Wherefore, we decree that where a party obtains a letter relating to some particular case, and his opponent obtains one which is general in its scope and in which many things are included, even though in the second no mention is made of the first; unless the matter, on account of which the other party obtained the first letter is especially mentioned, the second loses its force, and the first shall prevail. Moreover, we decree that where anyone obtains two letters, both alike with reference to a single case, each one for a judge, in order to cause his opponent trouble, they will be of no force and void, if judgment in the suit is asked by virtue of both letters, for it is not just that a letter obtained by fraud should be valid; and we decree that the said party shall pay the costs and expenses incurred by the other on account of said fraud; but where he obtains two letters of the same kind for one judge both will be valid; for it is the same thing as if he had obtained only one; since it appears that he did this rather for the purpose of protection, so that if one should be lost he would still have the other, than in order to injure the other party.

We also decree that where any persons are summoned to appear before the king upon a certain day, whether they are summoned by himself or by someone else, and also, where parties have taken an appeal to the palace of the king, or to any other place where they can do so according to law; and either of said parties arrives first and obtains the letter before the time appointed for the appearance of his opponent, whether he obtains it from the palace of the king or from any of the other places where the case in which he is summoned or where his appeal is to be decided; a letter of this kind has no effect, and will not be valid, for the reason that it was secured by artifice and fraud.

LAW XXXVIII.**A Letter Obtained by an Excommunicated Person Is Not Valid, Nor Is One Obtained by a Party Who Conceals Anything Relating to a Case Which Has Been Begun, or Any Other Fact.**

We hold also that letters obtained in any of the ways mentioned in this law are of no effect; as, for instance, where a person who has been excommunicated according to the laws of the Holy Church obtains a letter authorizing him to begin a suit against anyone, for a letter of this description has no force, and is not valid. And also, where a party obtains a letter from the king, relating to a case already begun before certain judges or before those having authority to decide suits, by means of which his opponent may lose his rights, or the suit be dismissed, or be heard again after it has been terminated, we decree that a letter of this kind will not be valid, unless mention is made in it of everything which has already transpired in the case before those who have heard it, and whose duty it is to decide it. But where it is stated in it that the party is injured by the wrong which has been done him, and shows a lawful reason why he should obtain the letter, we decree that a letter obtained in this manner shall certainly be valid.

We also decree that no letter shall be valid which anyone has obtained by stating that he has been wronged or imposed upon, being aware of the reason why he was treated in this manner, and keeping it quiet, and not desiring to mention it. Moreover, we decree that if any person should obtain a letter from the king granting him pardon for offences which he has committed; or with regard to the restitution of property; or relating to some other matter in which he is concerned, revealing but a part of the reason for which he petitions for pardon or makes the request, and concealing the rest; a letter of this kind shall not be valid because it keeps back the truth, and everything done, given, or promised, which is based upon it, will be void. But where it especially relates to a personal pardon for some offence committed, it will be valid so far as it concerns the acts for which pardon is asked, and no others.

LAW XXXIX.**A Letter Obtained in Opposition to Another Party, or Contrary to a Contract Is Void Where No Mention Is Made of One Previously Obtained; Nor Is a Letter Obtained for Another Party Without Authority to Act as Attorney Valid.**

Letters can lose their force, so as not to be valid, in many other ways which we intend to mention here, as, for instance, where anyone has a letter of favor or mercy, given him by the king, and another party obtains a letter contradictory to it, the second will not be valid, unless the one, which was given in the first place, is mentioned therein in such a way as to state specifically that the first letter is void. We also decree that if any noblemen or councils enter into an agreement with one another, which may be to the advantage and not to the injury of the king and kingdom, and some other person obtains a letter contrary to said agreement this letter shall not be valid, for it has no force because it was not obtained properly, but by concealing the truth.

We decree that the same rule shall apply where a letter is obtained contrary to a privilege which anyone holds concerning land, or an exemption, or any other benefit which the king may have conferred upon him. Moreover, we decree that a letter which was obtained without the authority of the party interested in the case has no force, except where he who obtains it belongs to that class which can conduct the suits of others without the authority of an attorney, as we stated in the Title concerning Attorneys.

LAW XL.**A Letter Obtained by Anyone and Which Relates to a Matter in Which Several Persons Are Interested in Common, Can Be Used by Others for Their Benefit, Although Not All of Said Persons May Be Mentioned in It.**

Certain men are sometimes interested together in land, a house, a tower, or some other property belonging in common to all of them through inheritance or partnership, or for some other reason; and it happens that they suffer wrong, injury, or dishonor on account of said property, and send a request to the king to appoint a judge to enable them to obtain justice in the matter, or to protect them. In an instance of this kind, we decree that if any one of said persons should obtain such a letter from the king all have the right to profit by it, even though all the other parties interested may not be mentioned therein.

LAW XLI.**A Letter Obtained Against a Widow, a Minor, or Any Other Person Mentioned in This Law, Will Not Be Valid.**

Men are sometimes impelled by malice to obtain letters against minors and widows, or men who are very old or afflicted with serious diseases, or who are very poor, in order to bring them into court before the king, or before *adelantados* or other judges who are not residents of the country where the above mentioned persons, against whom the letters were obtained, live. And for the reason that we do not consider this proper or just, we order that a letter obtained against any of the persons aforesaid, or against any like them on whom a man should have mercy or pity because of the wretchedness or misery in which they live, shall not be valid, and that the party shall not be required to answer anyone on account of it, except before the judge of the district where he resides.

We order, however, that any letters which any of the above mentioned persons in distress petitioning to be heard and receive justice, obtain against another party, in order to have him brought before the king or any other judge, shall be valid. The wise men of the ancients considered this proper as emperors and kings are especially judges of persons of this kind more than of others, and that it is part of their duty to enable them to obtain justice, and to maintain them in it, so that they may not suffer wrong or violence from others more powerful than they.

LAW XLII.**What Privileges Are Valid, and for What Reasons They May Lose Their Effect.**

Privileges have certain periods during which they are valid, and others in which they may lose their force. We shall speak first of those during which they are valid, and afterwards how they lose their force. Wherefore, we decree that privileges of exemption, which relate to freedom from taxes granted by the king; or from tolls which are not to be paid throughout his dominions; or where he exempts parties from any other service, or from anything else which it is their duty to perform especially for him, such privileges shall be forever valid. Such as these are lost, however, if those who possess them do not make use of them within thirty years from the day on which they were granted.

Moreover, there are privileges of another kind, which are conferred by the king, in which he gives permission to those to whom they are given to do

something new which they could not do without his command ; as, for instance, to hold a fair or a market ; or where he orders them to sell certain property formerly forbidden to be sold ; or permits them to take property from the kingdom, which, by reason of its being prohibited, they would not previously have dared to remove ; or where they had been accustomed to make sales according to one measure, and he gives them permission to do so by another, and everything else of this description ; such privileges we decree shall endure forever if the parties make use of them within ten years from the day on which they were granted, but where they do not use them within said period, from that time forth they lose their force, and will not be valid. We also decree that where anyone possesses a privilege and makes a bad use of it, as, for instance, if he exceeds his powers, or does more than was conceded in said privilege, it will lose its force, together with whatever benefit was granted by it, for it is but just that those who make a bad use of a favor or of mercy shown to them by kings, should lose it.

LAW XLIII.

Whoever Acts Contrary to His Privilege, in a Way He Should Not Do, Forfeits It.

Since we have begun to speak of privileges, we desire to mention in this law other reasons why they should be valid, and also for what reasons they are forfeited ; and we decree that where nobles, councils, or other persons enter into an agreement among themselves which is satisfactory to the king, and he confirms said agreement by his privilege, a privilege of this kind shall be forever valid. However, the first time that the said parties act contrary to it, it shall be forfeited, and thenceforth it will not be valid, so far as those who violated it are concerned, and, in addition to this, they shall be required to pay the king the penalty inserted in said privilege.

We also decree that, where the king grants a privilege of donation to anyone, and, at the time when it was granted, no serious detriment resulted from it, but, afterwards, those upon whom the king conferred it make use of it in such a manner as to injure many persons, a privilege of this kind shall lose its force and not be valid from the hour when it began to cause injury to many persons, as we have stated. Moreover, we decree that where a party is in possession of a privilege granted by the king with reference to certain property ; and suit is brought against him in court for any of said property ; and he does not defend himself by stating that he holds the privilege relating to the same ; the judgment is rendered against him in said case, and he does not appeal from it ; said privilege will be forfeited forever, so far as it specifically relates to the matter concerning which a decision was rendered.

LAW XLIV.

What Privileges Are Valid, and What Are Not.

No privilege, or leaden sealed writ, shall be admitted in which is not written the name of the king who granted it, the day, the month, and the year in which it was executed, as well as the number of years which the king had reigned who ordered it to be issued ; or which is not sealed with his seal, or signed with the usual signature of the king mentioned in the privilege. We also decree that if said privilege does not coincide in form and terms with other privileges which this same king was in the habit of granting, it shall not be admitted. Moreover, we decree that it shall not be admitted, when it is blank, or marked in any suspicious place, or torn or cut, as we have previously explained. We also decree that no copy of a privilege shall be admitted, except where it is granted by the king and he orders it to be sealed with his seal.

LAW XLV.**What Letters Are of General Character.**

Letters which include many things, and do not specify any one in particular, are called general; as, for instance, letters in which it is stated: "To all those who see this letter;" or in such as state: "I order you to collect something, or issue a summons, or do such-and-such a thing;" designating all those who are to perform the act, or who will be indicated by the bearer of the letter; and this includes the letters which the king himself sends in this same way, relating to any transaction which may occur. We also decree that where a letter is sent in which some person is particularly mentioned with reference to any matter, and afterwards he is included with many others; as, for instance, where a party makes a complaint as follows: "So-and-So, with many others, wronged me in this manner;" or if he should say: "I demand such-and-such property, and much more;" letters of this kind, although particular persons or certain property is mentioned in them, for the reason that they are mixed up with several others, resemble those which are large in scope, and all the letters mentioned in this law are called "general," because they include many things.

LAW XLVI.**How Many Men, in Addition to Those Who Are Mentioned in It, Can Be Brought Into Court by a General Letter of the King.**

The minds of men are divided in many ways, as we stated in the beginning of this book, and because there are some who are inclined to act in business rather according to their will than in compliance with law; we, fearing that someone may desire to take advantage of the preceding law to obtain letters by fraud, in order to injure others by means of them, desire to explain how all these frauds should be understood, and how their success may be prevented, and we decree that where one party obtains a letter against another in which it is stated: "So-and-So complained to me of So-and-So and of many others;" wishing by these words to bring several persons into court in order to cause them injury; we decree that, by a letter of this kind, no more than four men can be brought into, or summoned in a suit, except such as are especially mentioned by name in said letter.

We also decree that the four men aforesaid, who are not especially named in the letter, should not be, and cannot be, more powerful or more eminent than those who are mentioned, but that they should be equal, or inferior in rank, power and honor, to those against whom the complaint is especially directed. For if this should be done in any other way, a poor or degraded individual might be able to summon men of high character and rank, and, having brought them into court, he might make them lose their property, or a great portion of it, by means of such a fraud as we have mentioned.

We also decree that if the party who obtained a general letter, such as we have mentioned above, in which certain persons are especially designated, afterwards desires to sue those who are not specifically mentioned therein, in preference to the others, the judge, or the person to whom the letter is addressed, should not hear the case, for it would seem that this was done with a fraudulent design; except where the party or parties mentioned are dead, or seriously ill; or absent in the service of the king, or of some other lord; or employed on a mission by his council; or on a pilgrimage; on account of which they cannot be sued in preference to the others. And although we stated above that he who obtains such a letter is not authorized to summon more than four, in addition to those specifically designated; nevertheless,

where the claim is one that involves many persons, since the cause is a common one, and one advocate must make the claim for all, we decree that all can be sued together, and that no one can allege as a defense that the number is larger than four.

LAW XLVII.

For What Reason He to Whom the King Sends a Letter Relating to Some Particular Case Has Jurisdiction Over More Men and More Property Than Are Mentioned in the Letter.

We desire to speak concerning other letters granted concerning special and certain matters, and to explain by this law what they are, and how fraud committed by means of them should not prevail; and we do this in order that men may know how to protect themselves from suffering injury through fraud. We decree as follows, to-wit: a special letter is one in which certain persons are mentioned by name, as, for instance, where it is said: "Such-and-Such a man, or Such-and-Such a woman," and it is also one in which certain property is mentioned, as, for instance, "such-and-such a vineyard, such-and-such a house, such-and-such a tract of land;" or other real estate of this description.

We decree that the same rule shall apply to personal property; as, for instance, where such-and-such a horse, or so many cattle, or so many maravedis, or certain other property of this kind is specified. Where none of the words which include many things are contained in the letter as we stated in preceding laws, we decree that, by means of a letter of this kind the person to whom it is addressed has no authority to include in his decision more men or more property than what is especially designated in said letter; except in the following two transactions which are committed, as it were, by fraud. First, when the party against whom the letter is obtained transfers the property in question to some one else, in order to place impediments in the way of him who obtained the letter; and therefore we decree that he to whom the letter is sent shall cause the party who, by means of such fraud, received the property to answer, just as he should compel the other party against whom the letter was obtained to do, although no mention may have been made in it of the party in possession of said property. Second, where the property with reference to which the letter was obtained was exchanged for something else, and the plaintiff desires to bring suit for it.

We also decree, that the official to whom the letter was sent has also jurisdiction over the property for which the first was exchanged, just as he would have over that with regard to which the letter was obtained; and we decree that he to whom the letter was sent, has jurisdiction over all the persons aforesaid, just the same as he has over the party who had possession of the property which was transferred or exchanged, as well as over all other persons who used violence against him, or hindered him in any way with regard to property of this description, and that he has also jurisdiction over the rents and profits derived from such property. We decree, moreover, that he has power to employ compulsion against witnesses mentioned by the parties, to force them to come and tell the truth before him, as stated in the Title concerning Witnesses.

We also decree that no one shall determine a case of this kind except the person whom the king ordered to do so by his letter, unless he afterwards directs some one else orally to decide the matter; or does it by his letter, not desiring that the first one should determine it, or being of the opinion that he cannot, or should not, do so. Where, however, the king sends his letter to the judge of a certain district, or to some other man who holds some particular office, commanding him to decide a suit of this kind, and the name of the party

to whom the letter was sent was not especially mentioned therein; and the party to whom said letter was directed dies; any other judge who takes his place shall have the right to decide said suit. But where the name of the party to whom the letter was first sent is mentioned in it, no other person can decide the case, excepting him whom the king especially orders to do so by letter, or orally.

LAW XLVIII.

By What Royal Letters Those to Whom They Are Sent Acquire Jurisdiction, and Which Ones Are Conformable to Law.

We desire to show by this law by means of what letters it is understood that the persons to whom said letters are sent are invested with special authority to render decisions; and we decree as follows: that when the king sends a letter to anyone in which he orders him to do justice to some man or woman, or commands anything else to be done, it is understood that, by this message, the king confers authority upon him by which, after having acquainted himself with the case, he can determine whether the complaint is true or not. We decree that the effect will be the same where he states in the letter that the parties shall be summoned and their arguments heard, and a decision be rendered according to law and justice; or where he states in said letter that if it should be found that the complaint which is made is true, he shall do, or carry out what is contained in the same. Wherefore, we decree that if words of this kind, or others similar to them, are inserted in the letters, they confer power of jurisdiction upon the persons to whom they are sent, over said parties with respect to the matters concerning which they are issued, and, for this reason, they are called conformable to law. Wherefore we decree that letters which are conformable to law are such as the king, or one of those officials who have authority to order them to be granted for him, in his Court, grants, in which it is stated that something directed by the laws of this our book, or is according to the fuero of the locality to which the letter was despatched, should be done, or carried out.

LAW XLIX.

How Many Kinds of Letters of Grace There Are.

There are other letters of grace, which kings and other lords grant by reason of their authority, and these are issued for one of the three following reasons: First, on account of the benefit resulting therefrom; second, because things happen on account of which it is necessary they should be granted, and if this were not done, injury might result; third, as a reward for services which someone may have rendered, or by reason of some excellent quality which he may possess. We declare that letters of grace which are granted for personal benefit are of the following kind: for instance, such as are issued for exemption from taxes or from tolls to those living in any locality; or to those who erect buildings, castles, or bridges in towns, or in other places which may be for the advantage of the country. Also, such as are granted for exemption from taxes to those who have suffered any damage, for instance, by war, or by storms which deprived them of their crops, or other property; or to those who have sustained some accidental bodily injury, on account of which the king shows them favor, by exempting them from taxation; or grants them some other special indulgence. Those letters belong to this class which are issued when the king pardons malefactors, or irascible persons, on account of having received from them great services beneficial to himself and to the kingdom.

LAW L.**Concerning the Letters of Grace Which the King Grants to Prevent Injury to His Country.**

There is another favor which kings can grant by means of their letters, whenever anything happens which makes it proper for them to do so; and in case they fail to do this, where injury may result; as, for instance, where the king had banished certain persons from the country, and was about to engage in such a war that he is compelled to enlist their services; or where he had taken certain malefactors prisoners and was forced to release them for the same reason; or where he pardons others, who had committed some act for which they deserve punishment in person and in property; or where a king owed a debt to parties outside the kingdom, and permitted them, as a favor, to remove certain prohibited property therefrom, in order that there might be no need of written security, or anything else which would cause injury to the people of the kingdom. In cases of this kind and also in other similar ones the king can grant such a favor, when he desires to do so, being careful that serious injury does not result either to him or to the inhabitants of his kingdom, by reason of it.

LAW LI.**Concerning Letters of Grace Issued on Account of Excellence or Merit.**

That grace is a noble one which a king grants on account of merit for services which some one may have rendered, or because of some excellence possessed by the party to whom the favor is shown. It would be conferred on account of merit for some service performed, when the king, or any of his sons are married; or assistance was given to the king or the kingdom in time of war, or at any other time when it was necessary; or in any of the ways we have mentioned in the Second Book treating of armies; or where some other signal service had been rendered the king, on account of which he was obliged to give a reward as a favor, as, for instance, by a grant of land, or by an exemption releasing the party from the performance of certain things which he was required to do, for the sovereign; or by conferring upon him other distinguished honors, in order to show him favor, by giving him authority over certain countries or towns, or by appointing him to some position in his court from which he might derive honor and profit; or by recalling him, if he had banished him; or by pardoning him on account of some service which he had rendered; or for other acts which he might perform similar to these, or in some other way for which he would deserve the favor of the king.

We also decree that a king can show a man grace on account of some excellence which he possesses, as, for instance, where he finds him to be loyal, or learned, or imparting wise counsel, or a good knight in arms, or on account of other eminent qualities he may possess, by reason of which the king might feel obliged to show him favor, or to favor others on his account. Grace of this kind the king can show to those who we have stated deserve it on account of their good qualities, and to the others whom we mentioned above who deserve it on account of services which they have rendered.

LAW LII.**Concerning Letters Which Can Be Complied With Without a Suit or Judgment in Court.**

Certain letters should be complied with without any suit or judgment in court, and we desire to explain here which these are. We declare that they are such as those in which the king orders anyone to perform some particular

act; as, for instance, where he commands him to arrest or kill a certain man; or demolish certain towers or other fortresses; or cause a judgment to be complied with, or some other special act to be performed, stating absolutely in the letter: "Do such-and-such a thing as soon as you see this letter."

Wherefore we decree that the party against whom the letter is issued cannot interpose any defence in his own behalf to avoid complying with what was ordered in the same, except where he can show that said letter is false; or where he is commanded by it to obey some judgment, and he can prove that said judgment was obtained through false witnesses or forged documents. The party, however, to whom such a letter is sent has authority to hear evidence concerning cases of this kind, and to communicate the facts to the king that he may order what he thinks best in the matter; but he should not render a decision, as the letter orders him to do some particular thing, and does not confer upon him the authority to sit as judge. No one has the right to appeal from any act performed by the person to whom a letter of this kind is sent, except where he exceeds the powers granted by the letter which was sent to him.

LAW LIII.

What Penalty He Deserves Who Obtains a Letter from the Court of the King by Means of Falsehood.

It is not unreasonable that those should be punished who obtain letters from the king's palace, by concealing the truth or telling falsehood, for from this source arise many evils; first, those who grant the letters are deceived and caused to err by doing so; second, they injure the parties against whom the letters are granted, by causing them to be harassed, and to spend their money without justice. Moreover, in their construction they embarrass those to whom the letters are sent, which should not be the case; placing impediments in their way in the determination of other matters which they ought to be able to decide with justice, while they are delayed by the contradictions and falsehoods contained in the letters.

Wherefore we order that whoever obtains a letter of this kind shall pay all damages suffered by the party against whom he obtained it, as well as those suffered by the other party, and double the amount of the costs. But where such a letter was obtained for the purpose of executing sentence of death or loss of limb upon anyone; or in order to have him arrested; or to cause him some other dishonor; or to inflict some other injury upon his person, or property, and is made use of; we order that the party who obtained it shall suffer the same penalty as he against whom it was obtained, suffered, or was liable to suffer.

LAW LIV.

How Memoranda and Instruments Should Be Drawn Up by Notaries Public.

In every instrument drawn up by the hand of a notary public the names of those who directed this to be done should be inserted, as well as the matter on account of which it was executed, in the way that the parties agree upon among themselves; including the names of the witnesses present, and the day, the month, the era, and the place in which it was drawn up; and, after all this has been written down, a small space should be left in the instrument, and under it the notary should make his sign, and subscribe his name as follows: "I, So-and-So, Notary Public of Such-and-Such a place, was present when the parties mentioned in this instrument made the contract, agreement, sale, exchange, will (or any other act whatsoever according as is stated), and, by their request and order, I wrote this public instrument, and made my sign, and

wrote my name in it." It will be sufficient in every public document of this kind if two notaries public, in addition to the one who drew it up, act as witnesses, and subscribe their names to it; and if this number of the notaries public cannot be found in one place, three good men should be selected to sign it; and the names of the witnesses should be written at the end of the instrument, before the notary public who drew it up writes his own. In the case of a will, however, more witnesses should sign their names, as we shall show hereafter in the Title concerning Wills, and the notary public should be very diligent in exerting himself to obtain information about the men for whom he draws up such papers, who they are, and where they are from, so that no fraud may be committed in the matter.

When parties enter into an agreement or contract before him, those who are to act as witnesses should all be present together, and they should be informed, and it should be explained to them, who those are who make the contract, and in what way they execute it, by reading the memoranda to them all. The notary should ask those who directed the instrument to be drawn up whether they agree to the entire contract as stated in the memorandum which he read to them; and if they say that they do, those who are present should be made witnesses, and the public instrument should afterwards be drawn up on leather parchment according to the said memorandum and in the way above mentioned, and should be given to the party to whom it belongs and the notary should make a note in said memorandum, that it may be understood that it is no part of said instrument.

LAW LV.

What Should Be Done When the Notary Public Who Drew Up the Memorandum of an Instrument, Falls Ill, or Dies.

Notaries sometimes suffer from illness, or labor under other impediments, so that they are unable to draw up public instruments on leather parchment, by themselves, when they are required to do so, taking them from the memoranda which they have written concerning which we have spoken in the preceding law. For which reason we decree that, under these circumstances, a notary who is prevented in this way, should either summon, or apply to, another notary public, and show him in his register the memorandum he has made from which he is asked to draw up a public instrument, and ask him to do it, as is set forth in said memorandum. The notary of whom such a request is made should grant it, and write down with his own hand the contents of said memorandum upon leather parchment. At the end of the document he should place his sign, and write his name, and state as follows: "I, So-and-So, notary public of Such-and-Such a place, have drawn up this instrument by order of Such-and-Such a notary, as it appears in the memorandum of his register written by him, at the request, or by the order of those whose names appear in said instrument, not transposing or altering anything in it, for which reason I have made my sign, and written my name therein."

A public instrument made in this way will be just as valid as if the party himself who made the memorandum wrote it. When a notary public dies, the judges of that district should at once summon certain good men of the council, go to the house of said notary, collect all memoranda and registers that they can find, seal them with their seals, and deposit them where they can be safely kept, so that they may not be destroyed, or any fraud or falsehood be perpetrated with regard to them. They should afterwards give the registers, sealed in this manner, to the notary appointed by the king in the place of the deceased, and permit him to keep possession of said registers.

This they should do in the presence of some good men, to be selected by them if they are residents of the place, or, if not, before other reliable men who are members of the council. The notary who is appointed in place of the other should swear that he will keep these registers well and faithfully, and that, from the memoranda by means of which instruments have not yet been publicly made, he will draw up said instruments for those persons to whom said memoranda belong, whenever it becomes necessary; that he will not add to, or take anything from said memoranda, or change them in any way; and that in all these matters, or in any of them, he will not commit fraud or forgery, or permit it to be done.

After the registers have been delivered in this way by order of the king, and the notary has taken the oath, he can use the memoranda of the deceased notary for the purpose of drawing up instruments, and, in documents of this kind, where he writes his name, he should say: "I, So-and-So, notary public of Such-and-Such a place, by permission of the king, have drawn up this instrument in public according to the terms contained in the memoranda for said instrument, in the register of So-and-So notary, deceased; and I have neither added to, nor taken anything from it, nor altered anything in it; wherefore I have made my sign, and written my name therein." We also decree that if the witnesses are living whose names appear in the memorandum, they should, in a document of this kind, subscribe their names in the way we have mentioned above. When they are not living, the said notary should write their names in the document, just as he found them in the memorandum. Whenever a document is publicly made in this way it will be valid and will be admitted as evidence, just as if the notary who drew up the memorandum had written it before he died.

LAW LVI.

How a Conveyance Should Be Drawn Up.

Men make sales among themselves, and in order that they may be secure, make conveyances in the following terms: "Know all persons who see this instrument, that So-and-So sells and grants, to So-and-So forever, with the perpetual right of property which he hereby receives and purchases for himself and for his heirs, Such-and-Such a house located in Such-and-Such a place, which has Such-and-Such boundaries, or such-and-such a vineyard, or such-and-such a quantity of land; or such-and-such a tract of real estate, containing so many yokes¹ a year, which is located in Such-and-Such a place, and has such-and-such boundaries, so that the grantee and his heirs may have, hold, and exercise such authority over the said property sold to him as to do with it, and in it everything that he desires. And also that said property is sold and granted to him with all its entrances and its exits, and all its rights and appurtenances, and all the use belonging to said property in law or in fact, for the sum of so many maravedis; which said sum was paid to the grantor above named, before me, So-and-So, notary public, and in the presence of the witnesses whose names are subscribed to this instrument; and the said grantor admits that the price he received for the said property which he sold is just and right, and that it was worth that much at that time, and no more, and he states that he was well paid therefor. And, moreover, that he grants to the purchaser aforesaid, free and full authority to enter into possession of the above-mentioned property which he sold to him, without permission of a judge, or of any other person whomsoever. And, also, that he prom-

¹The indefinite amount of land that a yoke of oxen could plow in a day, generally estimated at one hundred and twenty by two hundred and forty feet, was derived from the Roman *jugerum*, equal to .622 of an acre. In England, two 'yokes' were considered an average day's work, when conditions were favorable.—Ed.

ises him, and covenants with him, that neither he, nor his heirs, nor anyone else in their behalf, will institute legal proceedings, or any contest, or will interpose any obstacles in court, or out of court, relating to the ownership or possession of said property sold to him, with respect to either the use of the same, or any right belonging to it; but that they will defend it, and remove all impediments which may arise to hinder the enjoyment of the same, at their own costs and expenses in court and out of it, and against any person whomsoever who may wish to interfere with said enjoyment. Moreover, that the grantor states and covenants that he has made no sale, transfer, or pledge of said property which he sold, or of any right or use appertaining to the same, to any other person, or in any other place, and that he will make the title secure in the manner already mentioned. And the grantor aforesaid, for himself and for his heirs, promises and covenants, with regard to this entire property and every portion of it, to the above-mentioned grantee, for himself and for his heirs, truly to keep and fulfill said covenants in good faith and without fraud; and not to violate any of them himself or by any other party, at any time or in any way; and to make reparation for all damage and loss suffered by the said grantee and his heirs on this account, in court and out of it, under the penalty of double the amount of the price aforesaid, which said penalty the grantee has a right to claim and have, as many times as the grantor or anyone else acting for him violates any of the covenants aforesaid; and whether the penalty is paid or not the sale will always remain valid. In order that all these covenants may be observed, as above mentioned, the grantor binds himself and his heirs, and all the property of which he was possessed at the time and might acquire thereafter, to the grantee and his heirs, and abandons and releases all rights, law, and *fuero*, ecclesiastical as well as secular; and every custom of which he could take advantage, or by which he could defend himself against the grantee or his heirs, with reference to the aforesaid property, and especially with regard to the penalty.

This instrument was executed at Such-and-Such a place, on Such-and-Such a day, and Such-and-Such a month, and during Such-and-Such an era, So-and-So, and So-and-So being called and asked to be witnesses. I, So-and-So, notary of Such-and-Such a place, was present while all these things were inserted in this conveyance, and, at the request of So-and-So, grantor, and of So-and-So, grantee, aforesaid, I have written this instrument and inscribed my notarial sign in the same."

LAW LVII.

How a Sale Bond Is Drawn Up.

Men give sureties in sales which they make, and the bonds should be drawn up in the following manner: "Know all persons who see this instrument, that So-and-So, resident of Such-and-Such a place, at the request of the above named vendor, became surety for So-and-So, purchaser, and promised, in his own name, that he would warrant the property which So-and-So sold to him; and he also promised that he would cause the vendor aforesaid, to observe and fulfill, for the benefit of the said purchaser and his heirs, all and each of those things which he promised to observe and fulfill in the aforesaid bill of sale, just as they are stated therein, under the penalty of so-many maravedis; said surety binding himself, his heirs, and his property, to the purchaser and to his heirs, and abandoning and releasing him from all rights, etc.;" as we mentioned above in the case of a conveyance.

It should be still further stated in a document of this kind that the vendor binds himself to the surety to release him from said bond without loss; and all this should be written in said instrument, if the surety was present at the

time when the latter was executed, but if he came in after its execution, then this should be done separately in the presence of witnesses, the notary inserting the place, the date, the month, and the era in which it was done, and, above all, adding his notarial sign.

LAW LVIII.

How An Instrument Should Be Drawn Up When a Wife Consents to a Sale Made by Her Husband.

Wives sometimes consent to sales made by their husbands, and the instrument containing said consent should be drawn up in the following manner: "Know all persons who see this instrument, that Mrs. So-and-So, wife of So-and-So, being well informed and cognizant of the rights she had in Such-and-Such property sold by her husband to Such-and-Such a man, consented to said sale, and was content with the same, and released and renounced all rights she had in said property, whether they were derived from a marriage gift, or from her dowry, or from any other source whatsoever; and that she granted and gave all rights she possessed in said property to said purchaser, abandoning all control over it forever; and moreover, that, she gave him authority, by reason of the rights which she had in said property, to aid the purchaser of the same, with regard to it, in and out of court, just as he could do with his own. And, moreover, that she promised and covenanted with said purchaser, binding herself and her heirs to him and his heirs, that she would always consider the sale made by her husband valid, and that she would always observe the renunciation and transfer which she made of the rights which she had in said property which was sold, and that said rights would never be revived against the property in any way, either by herself or by anyone else, under the penalty of so many maravedis;" as above stated in the deed of sale; and afterwards the notary should insert in this paper all the other matters just as they are written in the instrument aforesaid.

LAW LIX.

How An Instrument of Sale Should Be Drawn Up, When the Vendor is Not of Lawful Age.

Where a vendor is under twenty-five years of age, and over fourteen, he can set out in a document of this kind all the matters above mentioned in a bill of sale or conveyance, executed by another man, and in order that the purchaser may be secure, and certain of the purchase which he makes, it should be stated at the end of said instrument that, because the vendor was more than fourteen years of age and under twenty-five, he made oath on the Holy Gospels that everything which he covenanted in said instrument he would consider binding forever; and that no objection would ever be raised against said sale either by himself or by anyone else for the reason that he was a minor at the time when it was made, or because the property was worth more than he sold it for; and that he would never assert that the price which he received for it was not for his benefit, or take advantage of any other excuse, similar to these which he might allege in his own behalf.

Above all, the purchaser should take a surety from the minor, if he can obtain one, and a bond should be drawn up in the following terms: "Know all persons who see this instrument, that So-and-So, at the request and by the order of Such-and-Such a person, a minor, promises, in his own name as principal, to the purchaser, for himself and for his heirs, that he will maintain and defend the property sold to him by said minor, against every man whomsoever who may desire to question the title of said purchaser, and his heirs, in court

and out of it; and, moreover, that he will take care, and act in such a manner, that the vendor aforesaid will always agree to the sale which he made and the price he received for the property sold; and that he will always observe what he warranted and promised in the instrument of sale and in the oath which he took; and that he will never repudiate them at any time, or for any reason; and, moreover, that this surety promises to make reparation to the purchaser for all costs, expenses, damages and losses, which he may incur by reason of all or any of these things not being observed, as aforesaid; under penalty of so many maravedis; binding himself, his heirs, and his property, in such a way that whether the penalty be paid or not, the sale shall always remain secure and stable."

In addition to this, it should always be stated in the instrument that the surety renounces and rejects every law, *fuero*, and custom, of which he might take advantage, or which would release him from this obligation and bond which he has executed for the minor; and all these things which we have mentioned for the protection of the purchaser should be inserted at the end of the instrument of sale, if the surety was present at the time it was made; but if he did not happen to be there, and was selected afterwards, he should execute the bond separately as aforesaid.

LAW LX.

How a Conveyance Should Be Drawn Up When the Guardian of a Minor Sells a Part of the Real Estate of Which He Has Charge.

In order that the real estate of minors may not be easily transferred, except in payment of a debt, or to the great benefit of said minors, as we explained in the Title treating of them, as well as that this should be done with the permission of the judge of the district, the property having been publicly advertised for sale at auction for thirty days; for this reason we desire to show in what way the deed evidencing such a sale should be drawn up, and, in order that the purchaser may be secure in what he buys, and the guardian of the minor be protected from any mistake, we decree that said deed shall be worded in the following manner: "Know all persons who see this instrument, that So-and-So, guardian of So-and-So, a minor, proved before Such-and-Such a judge that said minor owed so many maravedis to So-and-So, as appears by a certain statement drawn up by the hand of Such-and-Such a notary. And in order that said minor may not suffer any injury through being oppressed by reason of said debt, and be liable to the penalty imposed for its nonpayment at the expiration of a certain time; and because the debt was persistently demanded of him it became necessary for him to sell such-and-such a house, or such-and-such a vineyard, which was published for sale at auction for thirty days, as is shown by the statement drawn up on account of said auction. Wherefore the guardian of the aforesaid minor, with the permission, and by order of the court, by his right in said property, does hereby sell such-and-such a house, or such-and-such a tract of land, in the name of the minor of whom he has charge, to Such-and-Such a man, himself, and his heirs, forever, which house is situated in Such-and-Such a place, and has such-and-such boundaries;" and he should afterwards include all the matters which we mentioned above in the first instrument which explains how a conveyance should be drawn up. However, in the place where the price for which the property is sold is given it should be stated that the minor sells said property for the sum of so many maravedis, paid to his guardian in the presence of the notary and of the witnesses whose names are subscribed to the document. And it should also be stated that the said guardian, immediately, in the presence of said persons, paid the debt which the minor owed to the party entitled to receive it,

and that the latter admitted payment of the same by surrendering and delivering to him the cancelled evidence of the debt which the minor had owed him.

Moreover, it should be set forth in the document, in the place where it is mentioned that the vendor binds his property and that of his heirs to the purchaser, that the obligation is that of the minor or his heirs; and, above all, it should be stated at the end of the document, that the judge, having examined the written authority by which said party was appointed guardian of said minor, and also the evidence of the debt which he owed, gave his consent to all the transactions aforesaid.

We also decree that if a minor has property from which he does not obtain much benefit, and his guardian sells it in order to purchase some other from which he may derive more profit; it should be stated in both instruments in that of sale as well as in that of purchase, why they were executed and also that they had been drawn up with the permission, and by the order of the judge; for, under no other circumstances, will what is done in a case of this kind be valid. In this same way, and for these same reasons, such instruments as are necessary should be executed which relate to sales made by guardians of the property of persons who are dumb, deaf, weak in mind, or spendthrifts, whenever real estate belonging to any of them is sold.¹

LAW LXI.

How a Conveyance Which Is Executed by an Attorney in the Name of Another Party Should Be Worded.

Attorneys transfer and sell property which is not their own, by order of others, and the instrument of said transfer or sale should be worded as follows, to wit: "Know all persons who see this instrument, that So-and-So, agent of So-and-So, having been given authority to sell such-and-such a house, or such-and-such a vineyard, and to receive the price of the same, and to promise in the name of said party all the things included in this instrument, as set forth in the power of attorney, drawn up by such-and-such a notary, or sealed with the seal of the party who appointed him his attorney; sells and gives such-and-such property, to So-and-So for himself and for his heirs, which said property is situated in Such-and-Such a place, and has such-and-such boundaries, (and all the other words we have mentioned in conveyances should be inserted) for the sum of so many maravedis, by which he, acting as agent of the owner of said property, and in his name, admits that he is paid, that he had received the full price, that it has passed into his possession, and that he renounces and rejects every defense, and especially that by which he might allege that the price had not been paid him;" and, in addition to all this he should state the other matters mentioned above in the instrument of the first sale,

¹ By the law of the Twelve Tables a spendthrift was declared to be "*civiliter furiosus*," and to require the protection of a guardian fully as much as a person who was *non compos mentis*. Where he had no relatives to assume the office, any freeman could be appointed. "*Si quis furiosus aut prodigus esset; neque illi praefectus tutor, qui saluti hominis prospicere valeat; proximos agnatos, vel si horum nulli fuerint, gentiles ipsius atque omnium bonorum curam gerere oportet.*" (Leg. XII Tab. V-VII.) The same doctrine was accepted by the civil law, authority to appoint *curatores* for such persons being vested in the praetor, even though they displayed no evidences of insanity. (Corp. Jur. Civ. Dig. XXVI-V-12.)

A guardian of a spendthrift can be appointed under the Spanish Code after a declaration has been filed in court, but his authority over his charge must be largely determined by the family council. The wife, or the direct heir of a prodigal, are the only parties authorized to make the application, except where the latter are for some reason incapacitated. The proceeding does not divest the party, of which it is the object, of paternal or maternal authority, and confers no power over his person. (Cod. Civ. de Esp. I-IX-3.)

In France a prodigal is placed in charge of a family council, appointed by the court, which superintends and advises all his acts, and he cannot legally transact any business without their consent. (Cod. Civ. de Fr. I-XI-3.)

The Italian law provides that the guardian of a spendthrift be named by a family council. (Cod. Civ. d' It. I-X-2.)

Neither the English nor American laws place prodigals under restraint, except in cases where they are manifestly insane. The code of Louisiana expressly prohibits such a proceeding. "Interdicting is not allowed on account of profligacy or prodigality." (Civ. Cod. of La. I-IX-1. Art. 413.)—Ed.

except in the place where it is said that the vendor binds his property and that of his heirs, he should say that he binds the property of the party who appointed him his attorney and that of his heirs.

LAW LXII.

How a Conveyance of the Property of a Deceased Person, Made by an Executor, Should Be Drawn Up.

Men at their death leave executors, who often find it necessary to sell the property of the deceased, and the conveyance should be drawn up in the following terms: "Know all persons who see this instrument, that So-and-So, executor of So-and-So, appointed and authorized to pay the debts and bequests made by the deceased, by the power granted him to sell and transfer his property so far as may be necessary to pay said debts, and bequests, as appears by the schedule which he made drawn up by the hand of Such-and-Such a notary public; desiring to carry out the wishes of the deceased, sells and gives, as executor, such-and-such a tract of land situated in Such-and-Such a place, and having such-and-such boundaries, which was part of the property of said deceased, to So-and-So and to his heirs, for the sum of so-many maravedis, which said price the above-named executor accepted, and acknowledged that he received and obtained, for the purpose of paying the bequests and debts aforesaid."

Everything relating to the sale should also be set forth, as we mentioned above in the case of an attorney, stating that he binds the property of the deceased for the sale made by him as executor. A sale of this kind, however, should be made at auction, in order to avoid the commission of any fraud.

LAW LXIII.

How a Conveyance, Transferring Immovables Sold by a Church or Monastery, Should Be Drawn Up.

When a church or monastery sells any immovables, the conveyance should be drawn up in the following terms: "Know all persons who see this instrument, that Such-and-Such a monastery, because it is oppressed with debts, and especially with those which it owes So-and-So, and to So-and-So of so-many maravedis; which said debts it is unable to pay out of the movable property owned by said monastery, (or inserting in the said instrument one of the other reasons mentioned in this book, for which churches and monasteries can sell real estate), as it appears by the schedule of debts drawn up by Such-and-Such notaries public; and for the reason that those who are entitled to receive said debts, are demanding them persistently and the monastery is obliged to pay them; and not having the means to do so it becomes necessary to sell such-and-such a house or such-and-such lands; wherefore, with the consent of So-and-So, archbishop, or bishop, or abbot, who is the prelate and superior of said monastery, as appears by the letter granting consent which is sealed with his seal; and also with the consent of the chapter, or the convent of said monastery, there being present So-and-So and So-and-So (mentioning all those who were there); So-and-So, abbot, for himself, and for his successors, in the names of the above-mentioned monastery, sells and gives to So-and-So, grantee and to his heirs, such-and-such a house, or such-and-such a tract of land, situated in Such-and-Such a place, and which has such-and-such boundaries; with all its rights and appurtenances, (as we stated in the first conveyance) for the sum of so many maravedis, given and paid by the purchaser, before the notary public who drew up the instrument, and the witnesses whose names are subscribed to the same, to So-and-So to whom is

owing said debt to the monastery, and this payment was made by command of the abbot and of the above-named monks who were present; and, moreover, the party entitled to receive the debt admitted that he was paid, and returned the evidence of the same, torn, to the abbot." And those things should be written down hereafter which were mentioned above in the first conveyance, except that it ought to be stated that the abbot, for himself, and for his successors, binds the property of the monastery to the purchaser and to his heirs, for the sale which he made to him.

All conveyances made by other churches which have a chapter or convent, should be drawn up in this same way. Where any parish church makes a sale, the instrument should be worded in this manner, except that, where it is stated in the aforesaid instrument that the sale is made with the consent and pleasure of the abbot and the convent, should be set forth in this that it is made with the consent and pleasure of the patrons and certain of the parishioners who should be present and whose names should be subscribed to the document.

LAW LXIV.

How an Instrument Should Be Drawn Up When One Man Sells to Another the Rights Which He Has in Any Property.

Men sometimes sell the rights which they have in certain property, and the paper evidencing a sale of this kind should be drawn up in the following manner: "Know all persons who see this instrument, that Pero Garcia sells, gives, and grants to Garcia Yuañez all the rights which he has against Alfonso Perez, his heirs, and his property, on account of so many maravedis, for which the vendor aforesaid says that Alfonso Perez is bound to him so that he cannot avoid paying them, as is shown by the document evidencing the debt, which was drawn up by Such-and-Such a notary public, which said document he delivered to the said Garcia Yuañez, constituting him his attorney to collect said debt as his own property, appointing him in his stead, and granting him authority to bring suit for said debt and penalty, and all damages and losses, as stated in the aforesaid document drawn up against the said Alfonso Perez, just as the vendor himself could do in court, and out of it; and that he made this sale, in consideration of so many maravedis which the aforesaid Yuañez counted and gave to the said vendor in the presence of the notary public and the witnesses whose names are subscribed hereto, and that the vendor aforesaid warranted and promised, for himself and for his heirs, to the above-named purchaser, and to those who will inherit his property, that he will always consider this sale and grant which he made secure, and that he will never interfere with, or oppose it, and that he has never assigned this debt to any person, and that it has not been paid or released. And also, that the above-named vendor and his heirs are bound to make reparation for all damages and losses, costs and expenses incurred by the purchaser in and out of court, in case said sale should not be free from all encumbrances, as aforesaid, under penalty of double the amount of the above-named consideration and the penalty, whether it is paid or not; that the said sale shall always be valid, and that the said penalty can be demanded as many times as the vendor or his heirs have acted, or shall have been found to have acted contrary to the provisions of this instrument. And in order that all these things may be strictly observed, the vendor has bound himself, his heirs, and all his property to the purchaser and his heirs;" and all the other matters set forth in the conveyance should be stated in this bond.

LAW LXV.**How a Bill of Sale of Animals Should Be Drawn Up.**

Men sell animals, and a bill of sale of them should be drawn up in the following terms: "Know all persons who see this bill of sale, that So-and-So sells to So-and-So, a certain horse of a certain color, and delivers it to him:" by transferring it to him by the ear or by the bridle, together with all the blemishes and bad habits which said horse had at the time when he sold him, enumerating them all, not only those which are apparent but those which are concealed. And, above all, he should say that he sold said horse for what he is, stating publicly that if he had any blemish at that time, or if one should be found afterwards, he will not be willing to be responsible for the same. Also that he made this sale in consideration of so many maravedis, which the vendor admitted he had received from the purchaser, and which had come into his possession, and that he was well paid by them; renouncing and rejecting every defense, and particularly the one which might allege that the consideration was not counted, given, and paid. And, above all, that the said vendor promised said purchaser to protect and defend the title to the horse which he sold, both in and out of court, against every man who might dispute it, or institute proceedings to obtain it, and also to make reparation to said purchaser for all damages and expenses he may incur on this account, under penalty of double the consideration aforesaid, binding himself, his heirs, and his property, to the purchaser and to those who may inherit from him. And, moreover, that said purchaser received and bought said horse in this way for what he was, as above stated; being content, and declaring that said vendor, from that time forward, was not bound to be responsible for any concealed or manifest blemish which said horse might have, whether it was apparent or not. Also that the purchaser promised the vendor that he would never bring suit to recover the consideration which he had given him, and to compel him to take back the horse; nor that he would do so on the alleged ground that said horse was not worth as much as he sold him for, and that he waived every law and *fuero* of which he could avail himself, under such circumstances.

If it should happen, however, that one man sold another a horse, or any other animal as sound, and warranted the title to him in and out of court, against the claim of every person; and it should be found that said animal had some blemish or bad habit which existed before he sold it, the consideration should be returned, and the animal given up; or where any other agreement was entered into between the purchaser and the vendor, the notary should insert it into the bill of sale, according to the terms agreed upon by the parties.

LAW LXVI.**How a Contract for the Exchange of Property Should Be Drawn Up.**

Men sometimes make exchanges of their property, and the instrument evidencing the exchange should be drawn up in the following manner: "Know all those who see this instrument, that So-and-So gives and grants to So-and-So in exchange, and in the name of exchange, in perpetual right, such-and-such a vineyard, situated in Such-and-Such a place, and which has such-and-such boundaries; and that he grants it with all the rights and appurtenances belonging to the same, and that he has a right to possess it in law and in fact, so that the grantee, and his heirs may hold and occupy it, and do with it and in it whatever they may desire, as they would with their own property; and that he renounces all right to said vineyard and to the occupancy of the same, and places the purchaser in control of it, giving and granting him power to take

actual possession of it whenever he wishes to do so. This he does because the above mentioned So-and-So gives to him a certain house in exchange, in consideration of the transfer of the vineyard aforesaid. The said house is situated in Such-and-Such a place, and has such-and-such boundaries, and is granted with all its rights and appurtenances, for the same reason, and in the same way that the other party granted and gave to him the vineyard aforesaid, and he places him in possession of the above mentioned house, giving and delivering to him the keys of the same." Also that the above named parties who made the exchange with one another, promised and agreed that at no time would they institute legal proceedings against one another, or make any contest concerning the property which they exchange, or any of its appurtenances; but that they will both defend them in court against every man who may desire to interfere with the same, and that each of them promises these things, and agrees with one another to comply with, and observe them, and never to oppose them, under penalty of double the value of the property exchanged; and, moreover, that they will be answerable to one another, for all damage and loss arising from this source, binding themselves personally, as well as their heirs and their property. And that, in addition to all this, each of them renounces and rejects every law, *fuero*, and custom of which he might take advantage to set aside and annul this exchange, so that it will not be valid, and especially every defence for not paying said penalty.

LAW LXVII.

How an Instrument Evidencing a Donation Made by One Party to Another Should Be Drawn Up.

Men make donations of their property, and an instrument evidencing a donation of this kind should be drawn up as follows: "Know all persons who see and hear this instrument, that So-and-So gives and grants, in perpetual right, to So-and-So, himself and his heirs, such-and-such a house situated in Such-and-Such a place; and which has such-and-such boundaries, and this donation he makes to him absolutely, under no conditions whatever, of his own good will and without any compulsion, warranting that the said house which he gives him, he and his heirs can possess and hold forever, to do with it and in it, everything which they desire, as they would with their own property, and he gives it to him with all its entrances and all its exits, and all its appurtenances, whatever they may be, and its possession both in law and in fact. He who makes the donation gives authority to the other party to whom it was made, personally to take possession of said house, whenever he desires to do so, without the permission of a judge or any other person whomsoever. And, in addition to all this, he promises that he will always consider this donation which he makes, as secure, and will never contradict it in any way; and especially that he will never revoke it by stating that the party to whom he made it did not thank him for it and was ungrateful; but committed against him some of the acts which, according to the laws of this our book, permit donations to be revoked and are mentioned in the Title treating of the same. Moreover, he promises to defend the title of the house which he gave him against every man who may desire to call it in question, and the party who makes this donation, promises all these things jointly and severally, for himself and his heirs, to the other party, and that he will observe and carry them out and never oppose any of them, under the penalty of a hundred maravedis. Also, that if he acts otherwise he will pay the penalty, and the said donation will always remain stable and valid; and, moreover, that he will make good all damages, losses, and costs incurred for this reason, and also that he abandons and renounces every law, etc.:" as above mentioned in other documents.

When he who makes the donation does so under any condition, and reserves some right for himself and his heirs, the notary should be apprized of the fact, so that he can draw up the instrument in conformity with the terms of said donation.

LAW LXVIII.

How an Instrument Should Be Drawn Up, Where a Lord Transfers Property, as a Fief, to His Vassals.

Lords grant much property to their vassals, as fiefs, and the conveyance of a donation of this kind should be drawn up in the following manner: "Know all persons who see this instrument, that Such-and-Such a noble, gives and grants, as a fief, and in the name of a fief, to So-and-So, himself, his sons, his grandsons, and all other males descending from him by lawful marriage, Such-and-Such a castle or Such-and-Such a town, or Such-and-Such a farm which is situated in Such-and-Such a place, and has such-and-such boundaries, and grants it to him with all its dependencies, with its mountains, its springs, its rivers, its pastures, its entrances and exits, and all its rights and appurtenances, whatever they are; which said property he is to possess in law and in fact, in such a way that all the above-mentioned persons, and those who inherit from them, can hold it, cultivate it, and do with it, and in it, everything that they desire, except that they can never sell or alienate it, but must keep it forever; but they must never use it as a base for hostilities, or permit any other injury or misfortune, arising therefrom, to be sustained by the party who granted said fief or his heirs. Moreover, he gives and grants said party full power personally to enter into possession of said property, which he bestows upon him as a fief, without permission of a judge, or of any person whomsoever; and promises for himself and for his heirs, to said party himself and his above-named descendants who may inherit from him, that he will never, at any time, or for any reason, place any obstacles in their way, in or out of court, respecting the property which he gives them as a fief, or with regard to any of its appurtenances; but that he will defend it against every person, and every community that may desire to question the title to the same; and he promises to assist said party, and remove all obstacles, so that the said party may remain in the possession of said property in peace and without contention; and the lord aforesaid agrees and promises to observe all the above-mentioned things, jointly and severally, and to consider them ever as secure, and never to oppose them in any way, under the penalty of a hundred marks of silver; and whether said penalty is paid or not, that the grant of the aforesaid premises, conveyed as a fief, shall always be secure and valid; and, he also promises him to make reparation for all damages, expenses, and losses, which he may incur in court on this account; and, above all, in order that all the provisions above mentioned may be strictly observed the said lord binds himself, his heirs, and his property, to the party who receives the estate as a fief, and those who are to inherit from him. The grant of said fief, and the obligation which said lord enters into, as above stated, are made for the following consideration, viz.: So-and-So who receives the same, being here present, promises the above-mentioned lord, and swears upon the Holy Gospels, to be, from that hour forward, his loyal vassal, both himself and his aforesaid heirs who may inherit the fief, to the said lord and to his heirs forever. Moreover, he promises to guard and defend their persons and their honor, and all their rights, and neither by advice nor action, by himself, or by anyone else, to do anything from which either dishonor, misfortune, or injury may result to said persons or to their property; but that every time that he learns that any parties are about to commit any such acts against said persons, that

he will do the utmost in his power to prevent it; and if he and his heirs cannot do this, that they will warn them as soon as they can, and that they will always keep their secrets, so that they will never be discovered through them. And the vassal of the aforesaid lord, promises to observe the above mentioned matters, jointly and severally, both for himself and for his heirs, against every person and every community, except the king and his sovereignty."

After all these things have been done and granted, as above mentioned, the lord, by way of confirmation, and to render this act stable, invests the vassal of the aforesaid fief, with a staff, a ring, and his gloves; and, moreover, as a symbol of the just love, faith, and truth, which should always be observed between them, accepts him as his vassal by giving him a kiss. The above mentioned form is the most common one in which an instrument granting a fief is drawn up, but where other contracts and agreements are included in the fief, they should be inserted in the document, which should correspond to the agreement entered into between the lord and his vassal.

LAW LXIX.

In What Way a Lease Should Be Worded, When Property Is Leased for Quit-rent.

Men rent property for quit-rent, and an instrument therefor should be worded in the following manner: "Know all persons who see this instrument, that So-and-So, abbot of Such-and-Such a monastery, with the consent and approval of his convent, So-and-So and So-and-So, the Superior Fathers of said monastery, being present, gives and grants for quitrent, and in the name of quit-rent, to So-and-So, himself, and his heirs, such-and-such a house, which is in Such-and-Such a place, together with all its buildings, and which has such-and-such boundaries. And he grants the above mentioned house to said party with all its rights and appurtenances, and with all its uses, to possess the same in law and in fact, so that he and his descendants, to the third generation, may have and hold the aforesaid house, and do with it, and in it, whatever they desire, just as if it was their own; except that, when he wishes to sell the right that he has in said house to other persons, he must first inform the abbot of said monastery from whom he received it, and if he is willing to give as much for it as the other party does, he shall be required to surrender it; and he gives and grants said house to him, for a quit-rent of so many maravedis, which said maravedis the party who received the house gave and paid to So-and-So who obtained them from the funds of the monastery, for the reason that he had lent them to the abbot for the benefit of said monastery, as appears by the instrument evidencing the debt, drawn up by Such-and-Such a notary public. This payment was made by order of the abbot, with the consent of the above mentioned Fathers, who were present before me, So-and-So, notary public, with the witnesses whose names are subscribed hereto. Moreover, the above abbot grants to the party aforesaid, free power to enter and take possession of said house himself, without the permission of a judge, or of any other persons whomsoever, by delivering to him the keys of the same; and by this said contract, he and his heirs, to the third generation, are bound to pay as quit-rent, every year, on such-and-such a festival day, to said monastery, one pound of wax, or one *meaja* of gold, which said quit-rent the aforesaid So-and-So agrees to pay in this manner. This lease shall be renewed, at the beginning of the fourth generation from that of the party who rented said house, except where, by the terms of said renewal, neither the abbot nor the monastery is entitled to receive from the party whose lease is renewed, more than so many maravedis. In addition to all this, the abbot, for himself and for all his successors, promises and covenants with the

party who rented the house and his heirs, never to bring any suit against them, or institute any contest involving said house or its possession, where they pay the rent every year, as above stated; but that they will defend the title to the same, against every man who interferes with it, or who disputes it, in or out of court. And the said abbot promises to observe and keep the covenants concerning the said house and all the above-mentioned matters in the manner aforesaid, and not to violate them at any time, or in any way, under the penalty of so many maravedis of gold; and, whether said penalty is paid or not, the contract and agreement contained in this instrument shall always remain secure and valid. He also promises to make reparation for any expenses, damages and losses incurred by said party in court, on this account, binding himself, his successors, and the property of the monastery to him who received the house and his heirs; renouncing and relinquishing every law, every *fuero*, and every ecclesiastical and secular custom, etc.:" as set forth above in the first conveyance. And for the reason that what is contained in this instrument concerns the monastery as well as him who receives the house, both parties deemed it proper that two of the same kind should be executed, one of which should be held by the monastery, and the other by the party who rents the house.

LAW LXX.

In What Terms an Instrument Evidencing Property Lent, and Referring to What It Is Customary to Measure, Count, or Weigh, Should Be Drawn Up.

Men make loans to one another of property which it is customary to measure, count, or weigh, and the instrument evidencing said loan, should be drawn up in the following manner: "Know all men who see this instrument, that Garci Perez, before me, So-and-So, notary public, and the witnesses whose names are subscribed hereto, received from Gonzalo Vicente twenty maravedis by way of loan, which the above-named Garci Perez promises to return to, and repay, the said Gonzalo Vicente, within six months from the day on which this instrument was executed, without dispute or hindrance and under penalty of double said amount; the said Garci Perez, binding himself, his heirs, and his property to the said Gonzalo Vicente, and his heirs, and renouncing and relinquishing every law, every *fuero*, and every ecclesiastical and secular custom of which he might be able to take advantage, and especially promising that he will not allege that the money aforesaid was not counted and paid to him. Moreover, the aforesaid Garci Perez hereby gives full power to the said Gonzalo Vicente, to bring suit for said money and the penalty, if they are not paid at the time and place agreed upon. And he also covenants with, and promises him that he will pay said sum of money whenever he is asked to do so, and that he will not interpose any defense, and especially the one that suit was not brought for the money at the place where it should have been according to his *fuero*; and in addition to all this, Garci promises to Gonzalo to indemnify him for all expenses, damages, and losses, which he may incur on this account."

Where a pledge is given to secure the loan, the obligation for said pledge should be stated in the same instrument in the following terms: "And, in order that all the provisions aforesaid may be strictly observed, the said Garci hypothecates to the said Gonzalo, by way of pledge, such-and-such a house, which is situated in Such-and-Such a place and has such-and-such boundaries, and grants full power to Gonzalo himself if at the appointed time he does not pay him what he has lent him, without permission of a judge or any other person, to enter into possession of said property, and take, sell, and alienate

it in payment of the principal, the penalty, the expenses, the costs, and the disbursements incurred by him on this account." But where the house is not worth as much as the sum to which he is entitled, as above stated, the claim of Gonzalo should be satisfied out of other property owned by Garci, until he has been paid in full. Where, however, the property is sold for more than he was entitled to receive, Gonzalo should be required to return to Garci the amount in excess. Where the man who gives the house as a pledge has a wife, we decree that, in order to make the party who receives the pledge more secure, the wife should be required to release her rights in said property, whether she obtained it through a marriage gift, or in any other way whatsoever, and this release should be made in the manner we stated above, where the wife of a party who sells anything is interested.

Where the borrower does not give a pledge but a surety, then a bond should be drawn up stating the fact at the end of the instrument evidencing the debt, and that, "to insure the observance of all the matters aforesaid, Ferrando, at the request, and by the direction of Garci, becomes surety to Gonzalo, and promises, in his own name as principal, to pay the latter the above-mentioned sum of maravedis; and binds himself to pay the penalty, damages, and expenses incurred on this account, to Gonzalo, and his heirs, in the same way as Garci bound himself, as aforesaid; and that he renounces and relinquishes every law, etc.:" as above stated, and especially, the law of this our book which treats of sureties, where it is stated that the principal should be sued before the surety. Where those who make the loan are two or more, the instrument should then be drawn up in the same way as we have said it should be done where there is only one; except that it should be mentioned therein that each of those who make the loan binds himself to return the entire amount, and that he does this in his own name as principal. In the place where it is declared that "he renounces every law, every *fuero*, etc.," it should, by all means, be stated that the parties especially renounce that law which treats of debtors when several enter into an obligation together, and that each is required to be responsible only for his own share.

LAW LXXI.

How an Instrument Should Be Worded, Which Relates to Property That Is Loaned, as, for Instance, a Horse, or Something Else Which Is Movable.

Men lend horses and other movable property to one another, and the instrument evidencing the loan should be drawn up in the following manner: "Know all persons who see this instrument, that Sancho, before me, So-and-So, notary public, and the witnesses whose names are subscribed hereto, has received from Rodrigo as a loan, one mule of a certain color, which said mule was appraised by the parties, all agreeing, at seventy maravedis. And that he lends said mule on the following terms, viz.: that he can drive it loaded, or ride it, (or take it in any way they agree upon), as far as Such-and-Such a place, and that he promises to return said mule, or pay the sum at which it was appraised within one month, and if the mule should happen to be injured in any way, or should die, the said Rodrigo who received said mule as a loan, shall be responsible for its injury, or death.

The above-mentioned Sancho, promises and covenants with the said Rodrigo, to do and observe all the above-mentioned things, without any suit or contest of any kind; and if he should do anything contrary to the terms of this instrument, he promises to pay him as a penalty, and in the name of a penalty, double the amount of the appraisement aforesaid, and to make reparation besides for all injuries and losses incurred on this account. And in order that the above-mentioned provisions may be the better observed, Sancho binds

himself, his property, and his heirs, to the aforesaid Rodrigo, and to those who may inherit from him, and renounces and relinquishes every law, and every *fuero*, etc." *ut supra*, and especially the law of this our book which provides that a party who makes a loan of this kind is not bound to pay for the property if it should be injured or die without his fault, or without any fraud committed by him.

LAW LXXII.

How an Instrument Should Be Drawn Up When One Man Gives Another Money, or Any Other Property, on Deposit.

Men leave money or other property with one another on deposit, and the instrument evidencing the same should be drawn up in the following manner: "Know all persons who see this instrument, that Domingo admits and acknowledges to have received from Velasco, for safe-keeping, one thousand maravedis of gold, in a bag sealed with the seal of said Velasco, which said maravedis thus enclosed and sealed, Domingo promises to return and deliver to Velasco well and fully, and without any dispute, whenever he, his heir, or his attorney, shall show this instrument, and demand said maravedis; binding himself, his heirs, and his property to Velasco, and those who are to inherit from him, and renouncing and relinquishing every law, and every *fuero*, etc.; and especially promising that he will not interpose any defence for himself, by alleging that said money was not shown to him, counted before him, and delivered to him." And for the reason that men who leave property with one another on deposit enter into agreements and contracts of many kinds, notaries should be directed to draw up instruments in accordance with the terms in which they make their contracts, and agree to them among themselves, always using the above-mentioned form, which is the ordinary one.

LAW LXXIII.

How a Lease Should Be Drawn Up When One Party Rents His Houses to Another.

Men rent their houses to others, and leases should be drawn up in the following manner: "Know all persons who see this lease, that Gonzalo rents and grants for rent, to Pedro, certain houses, which are situated in Such-and-Such a place, for residences, to hold them for one year after the day of St. Michael; and that the said Gonzalo promises to Pedro to keep said lease secure, and not contradict it in any way, until the expiration of said term; and that he will not take said houses from him, or pledge them, or transfer them until the said period has expired, but will defend and protect him against every man who desires to call in question, or dispute his possession of, or residence in, said houses. This he promises to do, in order that he and those who dwell in said houses by his direction, may be able to hold, have, and use the same, until the expiration of the time aforesaid, without any hindrance or contest whatsoever.

Wherefore, the said Pedro promises to pay to the said Gonzalo, as rent for said houses, thirty maravedis a year, as follows; half at the beginning of the year, and half at its end; and both parties consent and promise, each to observe and carry out these things, jointly and severally, and not to oppose or contravene them in any way, under penalty of fifty maravedis, for which their property shall be bound; and, whether said penalty is paid or not, all these matters shall be secure and valid, as above stated. Moreover, both promise to make reparation for all expenses, damages, and losses which either of them may suffer, if the provisions above set forth are not observed in the manner aforesaid."

LAW LXXIV.**How a Lease Should Be Drawn Up for the Rent of Vineyards, Gardens, and Other Property.**

Men rent to others vineyards, gardens, and other property, and the leases for the same should be worded in the following manner: "Know all persons who see this lease, that Alvaro rents and grants to Diego, a certain garden, or a certain vineyard of his, which contains so many *aranzadas*, and which is situated in Such-and-Such a place and has such-and-such boundaries, so that he and his heirs can hold, cultivate, and gather the crops until such-and-such a time. Moreover, he promises and covenants that he will not deprive him of the fruits of said vineyard, or garden, or molest him in any way, until the expiration of said term, but that he will defend the same against every man, or every community, that may desire to interfere with it, or institute a contest concerning it. He promises, moreover, that, during the term of said lease, he will not sell, pledge, or transfer said property in such a way that any hindrance or annoyance may result to the aforesaid Diego.

For which reason the said Diego promises Alvaro thoroughly to cultivate, and take good care of said vineyard or garden and all the structures belonging to the same, so that the vines or trees growing there may not be damaged, or dry up through his fault, or through want of attention at a time when they require it. He also promises that he will gather the fruit in good faith and without fraud at the time when it should be gathered, and to give and pay to him and to his heirs, on the festival of St. Michael, one hundred maravedis and a pair of capons; and, at the expiration of the term aforesaid, that he will deliver to him, and relinquish the vineyard or garden, cultivated and cared for as aforesaid;" and all these things, and every one of them, should be inserted in the lease as we have stated above concerning the renting of houses. Leases of other immovables should be drawn up in the same way, all the covenants which the parties agreed upon among themselves being inserted in them, in the same terms to which they assented before the notary public.

LAW LXXV.**In What Way an Instrument Relating to Labor Which One Man Promises to Perform for Another Should Be Drawn Up.**

Men sometimes promise to perform certain labor for one another, and the instrument evidencing this should be drawn up in the following manner: "Know all persons who see this instrument, that Pedro Martinez, the notary, promises, consents, and binds himself to the Dean of Toledo, to write for him the text of such-and-such a book (designating it by name) and agrees that he will write it for him, and continue to do so until it is completed, in the same hand which he wrote as a sample on the first leaf of this book, before me So-and-So, notary public, who drew up this instrument, and before the witnesses whose names are subscribed to the same. The aforesaid notary also agrees not to employ himself in writing any other work, until this book has been finished, and promises to do this for the sum of thirty maravedis, of which he admits and publicly declares he has received ten from the aforesaid Dean; and the other maravedis are to be paid in the following manner, to-wit; ten when half of the book has been written, and the other ten when it is completed;" and "all these things and each of them etc.," should be inserted in this instrument, as we stated above at the end of the lease of houses.

Where either party promises the other to build a house, a tower, or any other edifice, the notary public who is to draw up the contract should pay particular attention to what one party promises the other to do, and should

first insert in the instrument the agreement of one of them, and afterwards that of the other; and at the end of the contract he should insert the following general clause, which says; "and all the above-mentioned matters, and each one of them, which the parties have promised one another, etc.," as we stated in the lease of a house.

LAW LXXVI.

How an Instrument Relating to the Hire of Anything Should Be Drawn Up.

Men hire their beasts of burden to others, and the instrument by which they do this should be drawn up in the following manner: "Know all persons who see this instrument, that Remon hires and rents one pair of mules, each one of them of such-and-such a color, to Guillen who was present and received them before me, So-and-So, notary public, and the witnesses whose names are subscribed to this instrument; which said mules were appraised by the consent of said parties at a hundred maravedis. And the above-named Guillen can take said mules, loaded with ordinary and proper loads, as far as Such-and-Such a place. He promises to feed said animals well on barley, straw, and other food which they need, at his cost and expense, to give and pay as hire, to said Remon so many maravedis every month, and to return and deliver to him said mules in good condition, or their above-mentioned value, at Such-and-Such a place, by such-and-such a time. All these things, and every one of them, the said Guillen promises the said Remon to do, fulfill, and pay, as aforesaid, in good faith and without fraud, under penalty of a hundred maravedis, and whether said penalty be paid or not, all these provisions shall be secure, stable, and valid; binding himself, his heirs, and his property, to said Remon and those who are to inherit his property; and he renounces and rejects every law, and every fuero, etc.," as we stated above in other instruments.

LAW LXXVII.

In What Way an Instrument for the Charter of a Ship Should Be Drawn Up.

Men charter their ships, and the instrument evidencing the same, should be drawn up in the following manner: "Know all men who see this instrument, that Don Jordan, master of the ship called Buenaventura, charters the said ship to Aleman the merchant, to convey him with all his property, and with so many hundredweight of wax, and so many bales of hides, from Seville to La Rochelle. And the above-mentioned master promises and covenants with the said merchant to charter him said ship well provided with sails, yards, masts, cables, anchors, and everything else, and with two pilots and forty sailors, together with ten soldiers armed and equipped with their cross-bows, and four servants, and one small vessel, with all provisions and equipage necessary for a ship going on such a voyage. And the master also promises him to enter with his ship the port of Lisbon, or that of Ribadeo, or that of Coruña, or that of Santander, to transport from thence Such-and-Such merchants, who are his partners, or such-and-such merchandise, as the said merchant has collected there. The said master, moreover, promises the said merchant to enter and leave the port with his ship according to his wishes, and under his command, and to conduct and protect said merchant and his property well and faithfully during the whole voyage; and the said charter party the said master makes in consideration of two hundred marks of silver, which said marks of silver the merchant promises to give and pay to him within eight days after the ship has arrived at the port of La Rochelle.

The said merchant promises the said master to have the ship loaded in the port of Seville, with the merchandise aforesaid during the month of March, so

that the master can leave said port during the Kalends of April, God granting him suitable weather. All these things and each one of them, the master promises the merchant, and the merchant the master, to observe, perform, and comply with in the manner aforesaid, in good faith and without fraud, under penalty of a hundred marks of silver, which said penalty one of the parties shall be bound to pay the other every time he violates any of the provisions of this instrument, and this contract shall still remain valid, as above stated. And in order that all these provisions may be the better observed, the said master binds himself to the said merchant and his heirs—and especially the above mentioned ship—and confers authority upon said merchant in whatever country or place he may happen to be, to institute legal proceedings against him, by reason of the matters aforesaid, so that he can not avoid doing him justice before any judge into whose presence he may summon him, and that he renounces and rejects every law, every *fuero*, etc.; and also that the merchant binds himself to the master, together with his heirs and all his merchandise, and renounces, etc.” And for the reason that merchants and masters enter into different kinds of agreements and contracts with one another, the notary should be informed so as to understand them, and insert them into the instrument in the way in which they have been assented to by the parties.

LAW LXXVIII.

How an Instrument Evidencing a Partnership Which Certain Parties Wish to Form, Should Be Drawn Up.

Men form partnerships with one another for mutual profit, and the instrument evidencing such a partnership should be drawn up in the following manner: “Know all persons who see this instrument, that Pedro de la Rochela and Don Arberat, merchants of Seville, have formed a partnership with one another for the period of ten years, for the purpose of purchasing colored cloths, and selling them again in the street De los Francos, in Seville, and to do everything relating to a business of this kind; and into said partnership each of them has put one thousand Alfonsine maravedis, with which each one promises the other to conduct said business well and faithfully, and to divide with one another all profit, injury, or loss, which they may have by reason of said business; and all the above mentioned things and every one of them, each of said merchants promises the other to perform and to observe, as aforesaid, and not to oppose or contravene any of them, under the penalty of a thousand maravedis; and, whether said penalty is paid or not, the contract of said partnership shall always remain secure, each party binding himself and his heirs to the other, and renouncing and rejecting every law and every *fuero*.”

LAW LXXIX.

In What Way a Lease Should Be Drawn Up, When One Man Rents Another His Land to Be Cultivated for Half of the Crop.

Men rent their property to be cultivated for half of the crop, and the lease should be drawn up in the following manner: “Know all persons who see this lease, that Domingo Esteban, gives and grants, to Periuanez, such-and-such a tract of land, which is situated in Such-and-Such a place, and has such-and-such boundaries, for the term of five years, for half the crop; and that the above named Domingo Esteban, promises for himself and for his heirs not to embarrass or oppose him in any way in the occupation of said property; but that he will free him from the annoyance of any man who may desire to interfere with his possession of the same in or out of court, and that he will

constantly defend his tenancy of said property, for him and his heirs, until the expiration of said lease.

Moreover, the said Periuñez agrees and promises to cultivate and plow the aforesaid tract of land, so many times a year, and to sow it with such-and-such seeds, at his own expense. He also promises to give and deliver to him, at his house, half of all the crop which he gathers on said land. And the said Domingo Esteban and Periuñez, each promises the other, and covenants himself and for his heirs, not to contravene this agreement in any way, etc.," *ut supra*, as is stated at the end of the other instruments.

LAW LXXX.

How an Instrument of Partition of Property Held in Common and Made by Brothers, or Other Persons, Should Be Drawn Up.

Brothers and other men divide property which they hold in common, and the instrument evidencing such a partition, should be drawn up in the following manner: "Know all persons who see this instrument, that Domingo and Rodrigo Perez, sons of the late Peresteben, desiring to make partition of all the property which they hold in common and inherited from their father, and which is included in this instrument, by agreement with one another, have divided said property into two portions taking and designating as one portion such-and-such a house, which is situated in Such-and-Such a place, and has such-and-such boundaries, and also such-and-such a vineyard, and such-and-such a tract of land, and such-and-such jewels, and so many maravedis, which said portion, by the consent of both parties, shall fall to the share of the said Domingo Perez; and the said Domingo Perez, with the acquiescence of his brother aforesaid, chose and accepted said portion and acknowledged full payment by the same. And, for the other portion, they agreed upon and designated a certain house and a certain vineyard, which are situated in Such-and-Such places, and have such-and-such boundaries, also such-and-such jewels, and so many maravedis, and this said share of said property, is to belong to Rodrigo, who selected and took it, with the consent of his brother aforesaid, and accepted the same in payment of his share. And, moreover, the brothers aforesaid, for themselves and for their heirs, promise and covenant with one another, that if any contest or suit should be instituted against either of them on account of any of said property of which they have made partition, that they will pay jointly all expenses and costs incurred in court by reason of any injury to said property; and that if either of them should lose the same by a judgment in court, all the loss shall be made good, and divided equally between them; and that this partition and all other matters, and each one of them, mentioned in this said instrument the aforesaid brothers promise to consider secure and never contravene in any way, under penalty of a thousand maravedis, whether the penalty is paid, etc., binding one another and their heirs, and their property, etc.," as we stated in the first instrument of sale.

LAW LXXXI.

How an Instrument Evidencing the Discharge of a Debt or of Other Matters From Which One Man Desires to Release Another, Should Be Drawn Up.

Men frequently release debts and other claims which they hold against other parties, and the instrument showing such a discharge should be drawn up in the following manner: "Know all persons who see this instrument, that Aparicio, for himself and for his heirs, before me, So-and-So, notary public, and the witnesses whose names are subscribed hereto, grants to Gomez, for

himself and for his heirs, a full release, and agrees never again, for any reason or in any way, to demand any of the claims he held against him; and he especially releases him from the claim of a hundred maravedis which he owed him, as appears by the instrument drawn up by So-and-So, notary public. Aparicio makes this agreement and releases for the following reason, namely; because he admits and acknowledges that the said Gomez has paid him the hundred maravedis aforesaid, and that they have come into his possession; and he states that said maravedis and everything else which, up to this day, the said Gomez was bound to give, to perform, or to pay him, have been delivered and paid, so that he has no longer any complaint or claim against him, and that he returned to the said Gomez, the aforesaid evidence of the debt, cancelled and torn. And he also declares and agrees that if any document, executed before the day and the era of this instrument, concerning anything which the said Gomez was bound to give to or do for him, should come to light it should be cancelled and torn, and shall not be valid under any circumstances, or at any time.

And Aparicio, for himself and for his heirs, promises Gomez for himself and for those who may inherit his property, to observe all these provisions and every one of them, and to carry them out, and always to consider them as secure, and never, in any way or for any reason, to contravene any of them, under penalty of a hundred maravedis; which said penalty can be demanded as many times as Aparicio, or his heirs, violate any of the provisions aforesaid, and that the agreement based upon this release shall always remain secure and valid. And in order that all these provisions and every one of them may be the better observed, the said Aparicio binds himself, his heirs, and his property to the said Gomez, and to those who may inherit from him, and renounces and rejects every law, and every fuero, etc."

Where the parties do not desire to draw up an instrument like this in general terms, as above stated, but direct a particular receipt to be drawn, acknowledging the payment of a certain debt, then this should be done in the following manner: "Know all persons who see this instrument, that Pero Ruyz admits and acknowledges that Juan Perez paid him a hundred Alfonsine maravedis, which he was bound to deliver and pay him by reason of a loan, or a purchase, or something else (according to the statements of the parties), as appears by the evidence of the debt, drawn up by So-and-So, notary public; and he renounces and rejects every law and defense, especially that of denying that said maravedis were counted out and paid to him. In addition to all this, Pero Ruyz returned to the said Juan Perez the instrument evidencing the debt torn and cancelled, and promises him that neither on account of the said debt nor for any other reason, would he ever institute proceedings or a contest in court or out of it, against him or his heirs, under penalty of a hundred maravedis, etc.," *ut supra*.

LAW LXXXII.

How an Instrument Establishing Peace, Which Men Agree to Among Themselves, Should Be Drawn Up.

Men sometimes agree to make peace with one another, and the instrument showing this should be drawn up in the following manner: "Know all persons who see this instrument, that Don Rodrigo Alfonso, for himself, and for So-and-So, and So-and-So, of the first part; and Don Ramir Ruiz for himself, and for So-and-So and So-and-So of the second part; have mutually agreed to keep peace with one another perpetually with regard to the disagreements, disputes, grudges, and insults, of which they have been guilty toward one

another in word and in deed, up to the day and era of this instrument, and especially with reference to the ill feeling growing out of such-and-such a homicide. And as a mark of the true love and concord which should be preserved between them, they kissed each other before me, notary public, and the witnesses whose names are subscribed to this instrument, and promised and agreed with one another that this peace and concord should forever remain secure, and that they would do nothing against it, or to contravene it, of themselves, or by anyone else either in word, deed, or advice, under penalty of a thousand marks of silver; and, whether said penalty be paid or not, this peace and this agreement is to remain forever enduring and valid. And in order that all these provisions may be strictly observed and be secure, the said parties have bound themselves, their heirs, and their property, to one another, renouncing and rejecting every law and every *fuero*.

LAW LXXXIII.

How an Instrument Establishing a Truce, Made by Men Among Themselves, Should Be Drawn Up.

Men frequently establish a truce among themselves, and the instrument evidencing this should be drawn up in the following manner: "Know all persons who see this instrument, that Ferrand Ruiz, for himself, and for So-and-So (designating each party by his name), of the first part; and Juan Ferrandez, resident of Such-and-Such a place, for himself and for So-and-So, and So-and-So of the second part; have established a truce between themselves, for the period of one year, and have promised one another to observe said truce well and faithfully, in good faith and without deceit, for the entire period aforesaid, and not to do anything against it, or contravene it, either by themselves or by anyone else, in any way in deed or word, or by advice, under the penalty of treason;" (or any other penalty which the parties may agree upon). The notary should write the instrument in conformity with the terms of the truce agreed upon, and the penalty it is to contain.

LAW LXXXIV.

How an Instrument Should Be Drawn Up, When One Person Agrees to Give His Daughter to Another in Marriage.

Men sometimes agree to give their daughters to others in marriage, and the instrument evidencing a promise of this kind should be drawn up in the following manner: "Know all those who see this instrument, that Martin Esteban admits and acknowledges to have received for his daughter Teresa, and in her name, from Juan Garcia, five hundred Alfonsine maravedis, as a *donatio propter nuptias*, which said maravedis have come into his possession and of whose payment he has acknowledged the receipt, renouncing and rejecting every law and every *fuero*, and especially the right to claim that said maravedis were not given to him, or counted before him. Moreover, he covenants with, and promises the said Martin Esteban, that he will so act and contrive that his daughter Teresa will consent, and accept Juan Garcia as her lawful husband, as commanded by the Holy Church, within two months; and that he will give with her in marriage, and on account of marriage, such-and-such a tract of land, which is situated in Such-and-Such a place, and has such-and-such boundaries, and so many maravedis besides.

And in order that this agreement and promise may be the better observed, the said Martin Esteban sets apart and grants to the said Juan Garcia, as a

dowry and in the name of a dowry, and also by way of pledge, such-and-such a vineyard, or such-and-such a tract of real estate, which is in Such-and-Such a place, and has such-and-such boundaries, and relinquishes possession of the same, and places it under control of the said Garcia; with the understanding that if his daughter is not willing to accept him as her husband, in the manner aforesaid, or if he himself should refuse to give her to him in marriage, that the ownership, possession, and title of said vineyard, or said tract of land, shall be and remain in the said Juan Garcia, to do with it, and in it whatever he wishes, just as he can do with his own property. And, moreover, the said Juan Garcia agrees with, and promises the said Martin Esteban—he consenting for himself and for his daughter Teresa—that he will take her for his wife, and accept her as the Holy Church commands, within the time aforesaid; and that if he should fail to contract this marriage within said period that he will forfeit the dowry which will become the property of the aforesaid Teresa so that he could never claim it either himself, or by anyone else, according to any *fuero*, or for any reason ecclesiastical or secular. And both parties promise to keep, fulfill, and observe all these provisions and each one of them in the manner aforesaid, in good faith, and without deceit, and not to contravene any of them for any cause, binding themselves, their heirs, and their property, and renouncing and rejecting every law and every *fuero*, etc.”

LAW LXXXV.

How an Instrument Should Be Drawn Up, With Reference to the Consent of the Husband or the Wife, When They Desire to Marry.

A husband and a wife, give their consent to one another, when they desire to marry, by means of words spoken at the time, and the instrument showing such consent, should be drawn up in the following manner: “Know all persons who see this instrument, that Juan Garcia, who desires to marry Teresa, daughter of Martin Esteban, before me, So-and-So, notary public, and the witnesses whose names are subscribed to this instrument, did consent verbally at the time to accept her, speaking as follows; “I am content to take and receive, you, Doña Teresa, as my lawful wife, and I agree to accept you as my lawful wife.” And Doña Teresa should also say at the same time, “I am content to marry you, Juan Garcia, and I receive you as my lawful husband, and I agree to accept you by these words.” When these words have been thus spoken and concluded, it is customary in some countries for the husband to take his wife by the hand, and place rings upon her fingers, as a token that the marriage ceremony is finished and complete.

LAW LXXXVI.

How an Instrument Concerning the Dowry, Which a Wife Gives to Her Husband, Should Be Drawn Up.

Wives often give dowries to their husbands, and the instrument granting the same should be drawn up in the following manner: “Know all men who see this instrument, that Juan Garcia, admits and acknowledges that he has accepted from Doña Teresa, daughter of Martin Esteban, five hundred maravedis, as a dowry and in the name of a dowry, which have passed into his possession, and of which he has received payment, and that he renounces and relinquishes any defense, so that he cannot allege that the said maravedis have not been counted before, and given to him.

Moreover, Juan Garcia promises Doña Teresa, for himself and for his heirs, to return and deliver to her the said maravedis which he received from

her as a dowry, whenever their marriage is prevented by death, or for any other reason, under penalty of double the amount aforesaid, and whether the penalty is paid or not, etc. And he also promises to reimburse her or her heirs, for all expenses, damages, and losses which she may incur on this account, binding himself, his heirs, and his property to the said Doña Teresa and her heirs, and he renounces and rejects every law and every *fuero*, etc.;" *ut supra*.

LAW LXXXVII.

How an Instrument Relating to the Donation and Earnest Which a Husband Makes to His Wife, Should Be Drawn Up.

Husbands give pledges and make donations to their wives, and the instrument granting the same should be drawn up in the following manner: "Know all persons who see this instrument, that Juan Garcia gives and grants, as a gift on account of his marriage to Doña Teresa, his wife, such-and-such a tract of land, which is situated in Such-and-Such a place, and has such-and-such boundaries, with all its rights and all its appurtenances, etc.; so that she, and the children which they may have, may possess and hold said property to do with it, and in it, everything they wish, as they could do with their own. And the said Juan Garcia promises and covenants for himself and for his heirs, to consider said gift forever as secure, and never dispute it in any way, either himself, or by anyone else. And he also grants her power to take possession of said property, herself, without the order of a judge or of any other person. And Juan Garcia promises the said Doña Teresa, to keep and observe all these provisions, and each one of them, in good faith and without deceit, under penalty of a hundred maravedis, which said penalty, whether it be paid or not, etc.; binding himself, his heirs, and his property to Doña Teresa, herself and her heirs, and he renounces and rejects every law, and every *fuero*, etc. *ut supra*. The form of this instrument is according to the *fuero* of Spain, but, according to the laws, the contracts and agreements contained in the instrument which conveys the dowry should be inserted in that conveying the gift.

LAW LXXXVIII

How an Instrument Should Be Drawn Up, When Anyone Enters a Monastery, and Takes a Religious Order.

Certain men, who have property, enter a religious order, and it sometimes happens that an instrument is drawn up with regard to the same, and this should be done in the following manner: "Know all persons who see this instrument, that Domingo Vicente, having made a will disposing of his property—as appears by said will drawn up by So-and-So, notary public—and desiring to enter the service of God, and for the safety of his soul, reserving all property which he disposed of by his will, offers his person to God and to St. Benedict, and places his joined hands in those of the Abbot of Such-and-Such a monastery, the said Abbot, for himself, and for his successors, receiving him in the name of his church. And the said Domingo Vicente, promises the said Abbot obedience and reverence, and to observe and keep the rule of the aforesaid order, and to live in chastity; and renounces all the property of this world, saying that, from this day forward, he does not desire to have anything of his own. For which reason the aforesaid Abbot, So-and-So, and So-and-So, monks, being present, with their authorization and consent, do admit him as a monk into said monastery, and invest him with the temporal and spiritual property of said church by the kiss of peace."

LAW LXXXIX.**How an Instrument Should Be Drawn Up, When One Person Desires to Make a Retainer of Another.**

Men sometimes place themselves under the authority of others, making themselves their retainers, and the instrument establishing this should be drawn up in the following manner: "Know all men who see this instrument, that Bernaldo, for himself and for his children, those he has now and those of the male sex whom he may have hereafter, promises Domingo Yuañez, himself and his heirs, to be the retainer of him and his sons forever; and to acknowledge the superiority and power of him and his sons, and to give him every year on All Saints Day, two capons and two large loaves of bread, in acknowledgment of his seigniority. And, moreover, he promises for himself and for his sons, to live on such-and-such a tract of land belonging to him, and to cultivate it and plant it as well as he can, and not to depart from said locality without the consent and order of his said lord. These things the said Bernaldo promises and agrees to for the following reason, to-wit; because the said Domingo Yuañez promises to defend, advise, and protect him, his children, and his property, in court and out of it, from every man who may wish to annoy him, or do him injury or wrong. And he also gives and grants the said tract of land to the said Bernaldo, and to his children to have, hold, cultivate, and receive the crops of the same, forever; in such a way that they can dispose of the fruits obtained from this source, in any way they may desire, as they would do with their own property. And he also gives him authority to enter into possession of said land, without the order of a judge, or of any other person whomsoever, and to hold it, from this time forward, as above stated. Moreover, he promises him that he will not institute any suit or contest with respect to said land, in court, or out of it, while he performs the above mentioned service for him, and observes loyalty and truth towards him, as a retainer should do towards his lord and he also promises to protect him in the possession of said land from every man or community that may desire to annoy him. And the said Bernaldo and Domingo Yuañez, for themselves and for their heirs, promise one another to observe and comply with all the above-mentioned provisions, and every one of them, in good faith and without deceit, and not to do anything against them, or contravene them in any way for any reason, under penalty of a thousand maravedis, and whether said penalty be paid or not, this agreement is to remain always enduring and valid. And in order that all these provisions may be more secure and better observed, the said parties bind to one another themselves, their heirs and their property; and renounce and reject every law and every *fuero*, etc." As soon as the parties have directed an instrument of this kind to be drawn up and have given their consent to it, in order that the said contract may be secure, he who makes himself the retainer of the other, along with his lord, must go before a judge and again agree to all these matters in his presence, and a second instrument setting forth this agreement must be drawn up, for, otherwise, the first one will not be valid.

LAW XC.**How an Instrument Granting Emancipation Should Be Drawn Up.**

Men frequently enfranchise their slaves, and the letter of emancipation should be drawn up in the following manner: "Know all persons who see this instrument, that Gonzalo Yuañez emancipates Mohammed, his wife Axa, and his sons So-and-So, and So-and-So, and his daughters So-and-So, and So-and-So, and gives and grants them just and genuine freedom, and releases and lib-

erates them from his power, authority, and control, before me So-and-So, notary public, and the witnesses whose names are subscribed to this instrument. He also releases them from the right of patronage which he might, and should have exercised over them, (as the laws of this our book, which treat of this subject, set forth) and transfers to them free from all encumbrance and clear such-and-such property, which they hold in their own names. And the said Gonzalo Yuañez gives and grants this emancipation without conditions, so that the said Mohammed, his wife, his sons and his daughters can appear in court, and make contracts, agreements, and wills, and do everything else which emancipated and free men can, and should do.

Moreover, the said Gonzalo Yuañez acknowledges that he has received a hundred doubloons of gold, that have passed into his possession and under his control, which the said Mohammed counted out and delivered to him, as the price of this emancipation of himself, his sons, his wife, and his daughters, before me, So-and-So, notary public, and the witnesses whose names are subscribed to this instrument. And, above all, the said Gonzalo Yuañez, for himself and for his heirs promises and agrees that this emancipation and grant of liberty which he made to Mohammed, and to his wife, his sons, and his daughters, and everything else above-mentioned, he will always regard as enduring, and that he will never contravene them, either himself or by anyone else, in any way, or for any reason; and that he will protect said persons in court and out of it, from every man who may desire to interfere with their liberty, or institute a suit to reduce them to slavery; binding himself, his heirs, and his property, to the said Mohammed himself, his wife, his sons and his daughters, and renounces every law and every *fuero*, etc.;" *ut supra*.

LAW XCI.

How an Instrument Evidencing the Adoption of a Man Who Is Under Control of His Natural Father, Should Be Drawn Up.

Men sometimes adopt the sons of others who are in the power of their fathers, and the instrument showing such adoption should be drawn up in the following manner: "Know all men who see this instrument that Ruy Perez, with the consent of Gonzalo Ruiz, Judge of Toledo, adopted Ferdinand, son of Garcia Perez, with the consent of Garcia Perez, his father there present when this adoption was made, and the said Garcia Perez took his son Ferdinand by the hand and placed it in the hands of Ruy Perez, and Ruy Perez accepted him as his son. The aforesaid judge granted permission for said adoption after having carefully considered everything which should be considered, as the laws of this our book which treat of this subject direct; and ordered me, So-and-So, notary public, to draw up an instrument for this purpose;" and the notary should state in the place where he writes his name in a paper of this kind, that he did so by order of the judge, and with the consent of all the parties.

LAW XCII.

How an Instrument of Adoption Should Be Drawn Up, Where One Man Desires to Adopt Another Who Is Not Under the Control of His Father.

Where one man adopts the son of another, who is not under the control of his father, the instrument should be drawn up in the following manner: "Know all persons who see this instrument that Domingo Ruiz, in the presence of the king, adopted and accepted, as his son, Pero Ferrandez, who is the son of Ferrand Velasquez, he being present, and giving his consent. And the said Domingo Ruiz took the said Pero Ferrandez, with all his property movable

and immovable, and received him as a father receives a son in his society and under his control. And the said Pero Ferrandez, having been asked whether he was willing to accept Domingo Ruiz as his father, and Domingo Ruiz having also been asked whether he was willing to take and accept Pero Ferrandez as his son, both answered that they were. And for this reason all the other matters set forth in the laws of this book which treat of this subject having been considered and observed, the king granted permission for this adoption, and ordered So-and-So, a notary, to draw up an instrument to this effect, etc.;" *ut supra*, in the preceding document.

LAW XCIII.

How an Instrument of Emancipation Should Be Drawn Up.

Emancipation means the removal of a son from the control of his father, and an instrument granting emancipation of this kind, should be drawn up in the following manner: "Know all persons who see this instrument that Diego Aparicio, in the presence of Gonzalo Yuañez, *Alcalde* of Toledo, took his son Ferrand Dominguez by the hand, and declares and assents, with the acquiescence of his son, that he be removed from his control, and gives and grants him free power to make agreements, contracts, wills, and everything else which a man, not under the control of his father, can do in court and out of it. And the said Domingo Aparicio, also renounces all rights which the laws of this our book concede to a father, by which he can retain for himself the property of his son as compensation, when he frees him from his control. And, moreover, that Ferrand Dominguez his son, may be the better able to transact business, he gives him absolutely, and without any conditions, with the title of perpetual property, such-and-such a tract of land, which is situated in Such-and-Such a place, and has such-and-such boundaries, with all its rights and appurtenances;" as stated above in the instrument relating to donations. And all these matters should be stated at the end of the instrument, as well as that this emancipation and the aforesaid gift were granted by permission of the above-named judge, with the consent of both parties.

LAW XCIV.

How an Instrument Should Be Drawn Up Conferring the Guardianship of Minors.

Men appoint guardians for minors and their property, and the instrument conferring said guardianship should be drawn up in the following manner: "Know all persons who see this instrument that Rodrigo Esteban, Judge of Seville, having caused the relatives of Gil Perez, a minor, to be summoned, So-and-So and So-and-So appearing before him, he selected Garcia Dominguez and Isidro Ruyz, uncles of said minor, as his guardians, and to have charge of him and his property, for the reason that they were found to be reliable men, and of good report, and free to do and carry out everything pertaining to said guardianship; and, he also appointed them for the reason that the said parties were the nearest relatives which the said minor had. And the said guardians promised and swore, before me, So-and-So, notary public, the said minor being present, to do and carry out all things good and profitable for said minor, and to protect him from, and not to commit to his prejudice, anything that is injurious; and also to defend well and faithfully the person of said minor, and all his property, and to labor for his advantage, and especially to cause to be publicly recorded a schedule of all his property, movable as well as immovable, which he has, or should have in law and in fact; and to maintain and protect, in

good faith and without fraud, the rights of said minor in and out of court; and that when the time for which they were to act as guardians has elapsed, they will well and faithfully account for all the property of said minor which they had in charge of and which was under their control. And, in addition to this, the said guardians gave Don Martin as surety, which said surety at the request, and by the direction of said guardians, promised me, So-and-So, notary public, representing said minor, that he would conduct himself in such a way that the aforesaid guardians will perform all the acts above mentioned in this instrument, and especially that the property of said minor will remain secure, binding himself, his heirs, and his property to the said notary representing said minor and his heirs.

LAW XCV.

How an Instrument Should Be Drawn Up When Judges Place Minors in Charge of Their Mothers.

Judges frequently place minors in charge of their mothers, and the instrument by which this is done should be drawn up in the following manner: "Know all persons who see this instrument that Doña Hurraca, desiring to have her son, a minor, and his property in her charge, appeared before Gonzalo Yuañez, Judge of Toledo, and asked him to commit her son and his property to her care. For this reason the aforesaid judge, believing and knowing that she was a good woman and a prudent one, and seeing that the father of the minor did not appoint a guardian by his will, permitted her to have charge of the aforesaid minor her son, and his property; and the said Doña Hurraca promised and swore before me, So-and-So, notary public, acting for said minor, not to marry while she has charge of her son and his property; and, moreover, that she would do and perform everything which might be for the benefit and profit of said minor, etc.;" *ut supra*, as stated at the end of the preceding instrument. And, above all, the said Doña Hurraca declared in said instrument that she waived the right conferred by the laws of this book which state that women cannot obligate themselves for other parties.

LAW XCVI.

How an Instrument Should Be Drawn Up When the Guardians of Minors Appoint Attorneys to Bring Suit for Property Belonging to a Minor of Whom They Have Charge.

Guardians of minors appoint attorneys to bring suit for the property of minors, of whom they have charge, and the power of attorney should be drawn up in the following manner:

"Know all persons who see this instrument that Doña Hurraca, guardian of her minor son, being prevented by such-and-such a disease, (or by some other impediment) from adopting measures, by herself, to protect the rights and property belonging to her son; for this reason creates and appoints Ferrand Perez attorney and agent of the property of the minor in court and out of it, against every person or community, and especially in a certain suit which said minor has, or expects to have, with Gonzalo Ruyz, before So-and-So, judge. And she promises and consents that whatever said attorney and agent may perform and do in court, in the name of said minor, she will consider valid, and that if through his fault, fraud, or negligence, any of the rights of said minor should be lost, or prejudiced, she will pay the damage, and make reparation out of her own property, binding herself, her heirs, and her property, to So-and-So, notary public, representing said minor and his heirs who

drew up this instrument; and that she renounces and waives the right conferred by the laws of this our book which state that women cannot obligate themselves for other persons."

LAW XCVII.

How a Power of Attorney Should Be Drawn Up.

One man often gives another a power of attorney to make collections out of court, and said document should be drawn up in the following manner: "Know all men who see this instrument that Ferrand Garcia commissions and appoints Pero Martinez, his agent, or his steward, giving and granting him authority to purchase in his name certain vineyards and houses, situated in Such-and-Such a place, and also to take possession and occupancy of said property, and hold it, and take care of it for him. Moreover, he grants him authority to take charge of all property, movable and immovable, which he has in Seville, and to hire and rent the same, and receive its rents and profits and enjoy all the rights which he has, in his name, just as he, Ferrand Garcia, would do if he were there in his place; and with respect to all these matters, and each of them, he grants him free and full power to act, and promises and covenants, that he will always consider as stable everything which he may do, in his name, with regard to said property, and that neither by himself, or through anyone else, or for any reason, will he oppose him."

LAW XCVIII.

How a Power of Attorney Should Be Drawn Up When a Town Council, or Conventual Church Appoints Its Attorneys.

A town council or conventual church sometimes appoints its attorneys and a power of attorney of this kind should be drawn up in the following manner: "Know all men who see this instrument that Rodrigo Esteban, and Alfonso Diaz, judges of Seville—the Council of said city having met in Such-and-Such a church—with the pleasure and consent of all, appoint Diego Alfonso, their attorney, to bring suit, and answer before our lord and king, or before his judges, in the case which they have, or expect to have, with the Archbishop or the Chapter of Santa Maria, of Seville, involving Villa Verde, (or in any other matter whatsoever,) on account of which the said church of Seville may institute legal proceedings against the Council of this city. And they grant him authority to put questions and give answers, make a defense in said case, take and prosecute appeals, and perform all the other acts which a true attorney can perform in and out of court. And they promise and agree that they will consider whatever said attorney does as secure and enduring, and that they will never raise objections to the same; and they ordered me, So-and-So, notary public, to draw up this instrument for that purpose." A prelate should draw up his power of attorney, with permission of his chapter, in the same manner. In the Title concerning Attorneys, we directed how a power of attorney granted by other parties to enable everyone to bring suit for his rights in court should be drawn up, and for this reason we do not insert it here.

LAW XCIX.

How the Document Called an Inventory Should Be Drawn Up.

The paper in which a guardian should cause all the property of minors to be listed is called an inventory, and a document of this kind should be drawn up as follows: "Know all persons who see this paper that Garcia Alvarez,

guardian of Ruy Ferrandez, a minor, son of the late Pero Ruyz, as appears by the document drawn up by So-and-So, notary public, who ordered and caused this inventory of the property of the aforesaid minor which came into his possession, to be made as soon as he was appointed his guardian.

In the first place the said guardian states and acknowledges that he has found so much movable property belonging to said minor, and so much tillable land, and so many vineyards and so many olive orchards; (designating specifically how many there are and in what places they are situated): and also that he finds that he is entitled to receive so many maravedis from So-and-So, and so many from So-and-So, for which he holds obligations drawn up by So-and-So, notary public. He admits that he found all of this property, and every portion of it, belonging to the minor aforesaid, and that he has said property in his possession and under his care; and he ordered me, So-and-So, notary public, in the presence of the witnesses whose names are subscribed hereto, to draw up an inventory, in order that no doubt might arise concerning the property of said minor."

LAW C.

How an Inventory Should Be Drawn Up in Which the Heirs Cause All the Property of the Deceased to be Listed.

There is another kind of document called an inventory, in which the heirs of a deceased person cause all his property to be listed, and a paper of this kind should be drawn up in the following manner: "Know all persons who see this instrument that Domingo, son of the late Don Antolin, heir of his father as appears by his will and the bequests which he made, which said will was drawn up by So-and-So, notary public, in which the said Domingo was mentioned as his heir; in order to be informed beforehand, so that he might not be compelled to pay more to his father's creditors than he inherited from him; and also that he might secure and obtain from the bequests made by the deceased the share granted by the laws of this book to an heir who makes an inventory; therefore, the said Domingo made and ordered this inventory to be reduced to writing.

In the first place, he admits and acknowledges that he has found among the property of his deceased father so many personal effects, so much land and so many debts which were owing to him, or which he himself owed:" (designating what all these things are, and of what description, and also who the debtors are, and how many evidences of debt exist, and by what notary they were drawn up). This inventory should be made in the presence of three reliable men, residents of the neighborhood, and at its end the heir should state that all it contains is true, and if he does not know how to write, some other notary public should write this for him.

LAW CI.

How an Instrument Should Be Drawn Up When an Heir Declines to Accept the Property of a Deceased Person.

Heirs sometimes reject the property of a deceased person, and the document by which this is done should be drawn up in the following manner: "Know all persons who see this paper that Rodrigo Ygneguez, son of the late Don Ygnego, appeared before me Gonzalo Yuañez, Judge of Toledo, and stated that he declined to accept the land which is father left him by will, or which descended to him, for the reason that he died intestate; as his father owed many debts, and he would not risk paying them out of the property which

descended to him; and therefore he refused to accept said property, and relinquished it in the presence of the court, saying that he did not desire to receive either profit or injury from the real estate which belonged to his father, and requested me, So-and-So, notary public, in presence of the witnesses whose names are subscribed hereto, to draw up this paper." A document by which a person is appointed the heir of anyone (although he may not be his son) should be drawn up in the same way, where he desires to relinquish any real estate to which he has been made heir.

LAW CII.

How a Release Should Be Drawn Up When Minors Receive the Accounts of Their Guardians.

Minors receive accounts from their guardians, and their releases should be drawn up in the following manner: "Know all persons who see this paper, that Alvar Perez, being more than fourteen years of age, admits and acknowledges that Sancho Garcia, who was his guardian, has rendered him a good, loyal, and true account of all the property belonging to him, which he had in charge, both personalty and realty, which came into his hands and under his control; and that he has performed well and faithfully everything he was bound to do in the matters and things in which he was interested. And, moreover, that he acknowledges that his said guardian has delivered to him all his property which he had in his possession, and the profits derived therefrom, and everything which came into his hands, or under his control by reason of said guardianship; and admits full payment of the same. And, above all, the said Alvar Perez promises that he will never institute any suit or contest against him, or ever demand of him any other account of said property; and says and declares that he will consider valid all contracts and agreements made by said guardian in his behalf, as well as the payments made by said guardian for him, and those which he had made and received in his name. And, moreover, Alvar Perez releases every right and pledge which he could claim of the said Sancho Garcia and his heirs, and especially promises that, from this time forward, he will not allege, or complain that, through the fraud, crime, or negligence of the said Perez, he suffered loss or diminution of value in any of his property.

All these things, and each one of them, the said Alvar Perez promises and swears for himself and for his heirs to keep, observe, and consider valid forever, and that neither he, himself, nor anyone for him, will, in any way, contradict them at any time for any reason under penalty of a thousand maravedis; and, whether said penalty is paid or not, this agreement and release shall remain forever valid; binding himself, his heirs, and his property, and rejecting every law, and every *fuero*, etc.:" as stated in the first instrument of sale.

LAW CIII.

How a Will Should Be Drawn Up.

Men often make wills, and a will should be drawn up in the following manner: "Know all persons who see this document that I, Esteban Fernandez, being infirm in body and sound in mind, do make this my testament and bequest, in which I manifest my last will.

In the first place, I bequeath to Such-and-Such a church so many maravedis for the benefit of my soul." The notary should write down all the items of the bequest which the party makes for the benefit of his soul, and the other

in which he makes provision for his burial, and those for the debts which he owes, and for the wrongs which he has committed against someone else which he orders to be righted, in the way in which the party who makes the will directs. After this he should say that he makes So-and-So, and So-and-So, his heirs, and write down the conditions and way in which he constitutes them such, without changing anything, and where he causes it to be written down that he disinherits any son of his, the notary should state the reason why he does so. In addition to all this he should state who those are whom he appoints executors that have power to carry out his bequests; and where his sons are not of age, he should say in whose hands he leaves them; and, after this, he should state at the end of the will, "I, the said Esteban Fernandez, wish and direct that this my testament and last will shall remain forever valid, and I consent and desire that every will or bequest which I have made before this one be cancelled and considered void; and if any other bequest or will of mine, which has been executed subsequently to this one shall be produced hereafter, I also desire and direct that it shall not be considered valid, except where special mention of this will is made in it, declaring that I have revoked it all, or some portion of the same."

The notary should also state in what place the will was made, and in the presence of what witnesses, and the day, month, and era. As long as the person who ordered the will to be drawn up lives it should not be shown to anyone excepting to himself, and after his death a copy should be given to his heirs and to those entitled to the bequests, but only of the parts in which they are interested.

A will of this kind should be drawn up and read in the presence of seven witnesses, and where he who makes it is not willing for the witnesses to know its contents, he can direct the notary to draw it up in secret, and after this has been done the above-named witnesses should subscribe their names to it and seal it with their seals, as set forth in the laws of this our book in the Title concerning Wills.

LAW CIV.

How a Paper Making Another Kind of Bequest, and Called a Codicil, Should Be Drawn Up.

Another kind of bequest which men make is called a codicil, and it should be drawn up in the following manner: "Know all persons who see this document that I, Pero Fernandez, desiring to make a change in my will, which I executed at such-and-such a time, and which was drawn up by So-and-So, notary public, do direct that the property which I bequeathed to Sancho shall be given to Garcia, and that Sancho shall not have it; and moreover, I do not wish Such-and-Such a church to have such-and-such a vineyard, which I devised to it, but that it go to my heirs. Moreover, I bequeath to So-and-So, my friend, a thousand maravedis out of my property, and I desire that So-and-So, whom I have appointed guardian of my children, shall not act as such, but I wish So-and-So should be their guardian.

"And I direct that all the other matters which I stated in my will shall be secure and valid, except such as I especially alter, or add to." An instrument containing bequests of this kind should be executed in the presence of five witnesses. He who makes it can insert everything into it which he desires, except that he cannot make anyone his heir, or change one heir for another, or disinherit any of his children by it; for these things should be done in a complete will, as we stated above.

LAW CV.

How a Paper Should Be Drawn Up When Sons Who Are Under the Control of Their Fathers Desire to Make Donations *causa mortis*.

Where sons are under the control of their fathers they make donations *causa mortis*, and the paper granting this should be worded as follows: "Know all persons who see this paper that Nicolas Fernandez, being under the control of his father Fernand Perez, (in conformity with what is stated in the laws of this our book, namely, that a son under the control of his father cannot make a will, even though his father should consent to it, but can make a donation at the time of his death with the approval of his father) for the reason that the aforesaid Nicolas Fernandez directs that so-many maravedis should be given to the hospital of St. Michael, at Seville; or that to Such-and-Such a man, who was his companion at school, his books should be given; or that to Such-and-Such a man, his friend, should be given such-and-such a vineyard, which is situated in Such-and-Such a place, and has such-and-such boundaries. And for the purpose of carrying out and paying said bequests, he appoints his father his executor, and declares and directs that, if he should recover from his illness said donation shall not be valid, but shall belong to himself, and that if he should die of said illness the donation shall be valid." A paper granting a donation of this kind should be drawn up in the presence of five witnesses, the father of the party being present and consenting thereto.

LAW CVI.

How a Document Showing a Compromise Should Be Drawn Up.

Men sometimes have disputes among themselves and place them in the hands of mediators, and a paper relating to a matter of this kind is called a compromise, and should be drawn up in the following manner: "Know all persons who see this document that Garcia Fernandez of the first part, and Gil Perez of the second part, agree upon, appoint, and select Fernand Matheos as mediator, umpire, arbitrator, and common friend concerning such-and-such a dispute, or such-and-such a contract existing between them, (and its nature should be set forth by the notary in the document) which the said Garcia Fernandez and Gil Perez both together promise the aforesaid mediator, to abide by, carry out, and obey, whatever he may do, judge, or order, concerning the above-mentioned matter in dispute. Moreover, they grant him authority to decide and determine the same, at once, or later if he should desire, in writing or without it; on a festival or an ordinary day; whether the parties are present or not; with or without the observance of the proceedings of the law; in any place and at any time whatsoever; and to arrest said parties and cause his decision and his order to be complied with; and also authorize him to explain and interpret the words of his decision if they are obscure, or any doubt should arise with regard to them.

And, above all, they grant him free and complete power to act, to interrogate, and to decide between them, just as a judge, arbitrator, or common friend would do. And they promise to obey all and each of the matters included in this document, and to consider them valid forever, and not to oppose them, themselves, or by anyone else, at any time in any way, under penalty of a thousand maravedis; which said penalty shall be paid as often as they oppose or contravene the decision of the aforesaid mediator; and whether said penalty is paid or not, whatever is written in this document shall always remain secure and valid, and also everything which the said mediator shall decide and order.

And that all these provisions may be the more secure and enduring, the said Garcia Fernandez and Gil Perez, obligate themselves, their heirs, and their property to one another, and renounce and reject every law and every *fuero*, etc." If, however, the parties desire to have their contract drawn up in any other form, the notaries should do this in the way they agree upon.

LAW CVII.

How Documents Should Be Drawn Up When Judges of Arbitration Decide Disputes Which Parties Place in Their Hands.

Judges of arbitration decide cases which parties place in their hands, and the document containing their decision should be drawn up in the following manner: "Know all persons who see this document that I, Fernand Matheos, chosen as arbitrator, umpire, and common friend of Garcia Fernandez of the first part; and Gil Perez of the second part; concerning such-and-such a case, or dispute existing between them, as appears by the paper drawn up by So-and-So, notary public, the complaint and the claim which the said Garcia Fernandez brought against the said Gil Perez and the answer that Gil Perez made to the same having been heard; the case having been begun before me, and the oath of both parties having been taken, according to law; and the witnesses, documents, and arguments on both sides having been considered; and having advised with learned men, concerning said case; I decree and order that Gil Perez pay to Garcia Fernandez so many maravedis, and that Garcia Fernandez release him from all cause of complaint, and any claim which he may have against him on this account; and I order that all these things shall be observed by both parties, under the penalty mentioned in the instrument setting forth the terms of the arbitration, which was written by So-and-So, notary public."

LAW CVIII.

How a Document Should Be Drawn Up When a Judge Has to Decide Against One of the Parties for the Reason That He Is in Default.

One of the parties is sometimes in default, so that a judge is compelled to decide against him, and the document containing said decision should be drawn up in the following manner, "Know all persons who see this paper that I, Fernand Matheos, Judge of Seville, on a complaint made to me by Gonzalo Yuañez against Esteban Perez, caused the latter to be summoned by my letter, or by my messenger, according to law, and because he was disobedient, and unwilling to appear before me, although he was summoned three times, first personally, and the other two at his residence; therefore the complaint and claim having been heard which the said Gonzalo Yuañez had against Esteban Perez, which is as follows, viz.: 'Before Us, Fernand Matheos, Judge for the King at Seville, etc.;' (and the notary should include in the document the entire complaint and claim as it was brought before the judge, and when this has been finished he should say;) "I, Fernand Matheos, Superior Judge of Seville, having caused the said Gonzalo Yuañez to be sworn that he had not brought this suit maliciously, but for the purpose of obtaining justice, do decree and order the property belonging to Esteban Perez, to the value of a thousand maravedis, to be delivered to the said Gonzalo Yuañez, in default of answer."

Where the dispute has reference to property which the plaintiff brings suit for as his own, or whose possession is claimed by him, it should then be stated at the end of the decree that he orders that such-and-such property which the party demands as his own, or of which he claims possession when possession alone is claimed, should be delivered to him.

LAW CIX.**How a Final Decree Should Be Drawn Up.**

A final judgment means a dispositive decision, and the document containing it should be drawn up in the following manner: "Know all persons who see this paper relating to a controversy brought before me, Fernand Matheos, Judge for the King at Seville, that Pero Lorenzo brought suit against Domingo Yague, etc." The notary should include in the document the entire complaint, in the way in which it is brought before the judge, and afterwards the answer made by the defendant, and after this he should say: "this suit having been begun before me, Fernand Matheos, by complaint and answer; and having examined the witnesses that both sides brought before me, and also the questions and admissions and the papers and arguments produced by the parties and, in addition to all this, having taken the advice of reliable men who are learned in the law, and, moreover, having summoned the parties to appear and hear the final judgment; I decide and order, that Domingo Yague deliver to Pero Lorenzo the house (or tract of land) for which he brought suit before me, as above stated, for the reason that it is his, and that it rightfully belongs to him, and that the other party did not prove anything with regard to said property which should prevail." And where Pero Lorenzo only claims possession of the house for which he brought suit, he should say: "except the rights of either party concerning said property and its ownership." But where the suit was brought to recover a certain sum of maravedis, or anything which can be counted, weighed, or measured, judgment should be given against the defendant, according to the amount proved by the plaintiff; and if it should be ascertained that the former defended the suit maliciously he should also be compelled to pay the costs taxed by the judge, and the plaintiff should swear that he acted with this motive, as we stated in the laws treating of Judgments.

LAW CX.**How an Appeal Should Be Drawn Up.**

Men frequently appeal from the decisions which judges render against them, and the appeal should be drawn up in the following manner: "Know all persons who see this document which refers to a dispute arising between the Abbot of Ona of the first part, and Gonzalo Ruyz of the second part; by reason of a decision which Don Marin, Judge of Burgos, rendered in favor of said Abbot against Gonzalo Ruyz, by which Gonzalo Ruyz considered himself injured and appealed to the king, and both parties came into court before us, Ferrand Yuañez, el Gallego, and Domingo Yuañez, supreme magistrates, and judges of appeals of the king's palace. Wherefore we, having examined the decree of Don Marin, etc.; (the judgment should be entirely written out and from what an appeal was taken, and after this they should say) and also having examined the appeal, and the matters in the case as they transpired before Don Marin, the judge; and having heard all the arguments which both parties desired to make and state before us; and having taken the advice of good men learned in the law; rendering our decision, we decree that Don Marin decided properly, and that Gonzalo Ruyz did wrong to appeal; and we affirm the above mentioned decision of Don Marin"; and where the judgment relates to several matters, some of which the judge decided well, and others badly, then the appellate judges should say: "for the reason that we find in such-and-such a matter, the judge, Don Marin, decided as he should have done, for this reason we decree that Gonzalo Ruyz erred in taking an appeal, and that the above

mentioned judge decided in a proper manner. And, moreover, for the reason that we find in such-and-such a matter, that Gonzalo Ruyz was injured in his rights, therefore we decree that since the judge decided wrongfully in this matter, Gonzalo Ruyz was right in taking an appeal."¹

LAW CXI.

For What Reasons Privileges and Documents Which Are Not Valid Can Be Lawfully Repudiated.

We have explained sufficiently in detail in former laws, the forms and kinds of privileges and documents which are issued by the Court of the King, as well as others drawn up by notaries public, and now we desire to state here for what reasons privileges and documents can be abrogated according to law, before judges, and they are the following. First, where the document cannot be read, or its true meaning understood. Second, where there is any erasure, or where any of the letters are changed or inserted in the name of the person who ordered the paper to be issued, or of him who granted it, or in that of the party who received it; or in the time, or in the amount of maravedis, or in the matter relating to which the paper was drawn up; or in the day, month, or the era; or in the names of the witnesses or of the notary, or in the name of the place where the instrument was executed. But where the erasure, or the insertion, alteration, or omission of a letter was caused by a mistake of the notary, or appears in some other place in the document so that the meaning is not changed thereby; or that no doubt can arise in the mind of the judge or any other learned man concerning it, as having been made with evil design; we decree that the document should not be abrogated on this account.

We also decree that if the paper contains notes; or is blotted in the above mentioned places; or is torn or cut in such a way that the cut touches the letters, it will be liable to suspicion for this reason, and should not be delivered; except where the party who produces it can prove that this was done without his consent, by the violent act of another, or accidentally. Moreover, when the paper is found to be unlike others in the handwriting in which the name of the notary who states that he drew them up appears, it should not be believed; except when reliable men, who understand writing, and who, having first been sworn to tell the truth say that said dissimilarity exists on account of the difference in the ink, or in the parchment, or in the times at which the said instruments were executed, but that the handwriting is substantially the same, as we shall show hereafter.

A paper is also liable to suspicion in which witnesses state that they subscribe their names thereto and where all the writing is alike, so that it appears to have been written by one hand, for it cannot be that the handwriting of one notary is so much like that of another that no dissimilarity exists between them, and for this reason the document will not be valid. Moreover, a document of this kind is not valid in which the day, the month, and the era in

¹ The reader cannot fail to be impressed with the elaborate and systematic arrangement which characterizes the forms of the various instruments given in the preceding pages, that provide for every contingency and are so admirably adapted to protect the rights of all parties interested. Especially is this true of those which evidence the transfer of the title to real property. The insertion of a penalty and the requirement of sureties—in addition to the covenants of warranty—in the larger part of these forms, of course contributed greatly to the security of the purchaser. The laws of ancient Spain, even those that antedate the *Forum Judicum*, were ever solicitous for the welfare of minors and persons of unsound mind, and nowhere can be found more carefully considered provisions for the preservation of these helpless members of society from the heartless exercise of rapacity and fraud. The number and variety of these instruments and their application to all ordinary conditions and circumstances indicate a high degree of legal attainments and knowledge in the medieval legislator. Many of them vary only in trifling particulars from those now in everyday use. We see here the original release of dower by the wife; the conveyance of real estate by the representatives of societies and corporations; sales of executors; transfers as fiefs; the construction of leases; the formation of partnerships; the execution of wills; the partition of estates; the taking of appeals; and almost every other conceivable provision requisite in the intercourse and business transactions of life.—Ed.

which it was made do not appear, as well as the names of at least two witnesses written by their own hands, or the hand of the notary public who drew up the paper, according to the custom of the country. When any of the parties produce two documents in court which are contradictory respecting the same fact, neither of them will be valid, because it was in the power of him who offered them to introduce the one which might help his case, and not the other.

LAW CXII.

Judges Should Be Diligent in Investigating the Frauds Committed by Wicked Men in Documents.

Wicked and deceitful men attempt to commit so many frauds by means of documents that where a judge is not very diligent in seeking and investigating them, great injuries may result from this source. In order to guard against this, we decree that whenever anyone introduces a document in court to prove his claim, or for the purpose of defense, he must show it to the judge, and must give a copy of it to his opponent, if he asks for it. However, in the copy which is given, neither the day, the place, nor the era in which it was executed, nor the names of the witnesses in whose presence this was done should be inserted, except where the party who demands the copy states that the document is false, and he wishes to prove it. For if he asks it for this reason, then a complete copy should be given him, he having first sworn that he believes that the said document is forged, and that he does not make this statement maliciously.

There is another reason why a complete copy should be given, although the party may not wish to prove that the document is forged, and this would be the case when anyone comes into court as the attorney of another, or as the guardian of a minor, and he is asked for a copy of his power of attorney or of the document conferring upon him the guardianship of the person in whose name he desires to bring a suit, or defend one. A copy of a document of this kind should be complete, and include the era and everything else, in order that whatever was done in the case may not be called in question where the other party subsequently denies that he was the attorney or guardian of the person for whom he appeared. We decree that the same rule shall apply when any of the parties make use in court of any decision or order, or any written documents of those called writs, issued in legal proceedings before a judge; for complete copies of documents of this kind should be given to the party who requests it, as they are the common property of both parties, and a fraud cannot be so easily committed in them as in the other written instruments.

LAW CXIII.

For What Reason a Complete Copy of a Privilege, a Will, or an Instrument Should Not Be Given.

It happens sometimes that men introduce into court a privilege or some other public document, or a will, which contains several items, or enumerates many separate rights relating to various matters, and the party who introduces it, desires to make use of, and profit by, what concerns him alone, and does not wish to exhibit his privilege or his will in its entirety; for which reason we order that where such a privilege, document, or will is requested, in a case of this kind the party is not bound to give a complete copy, but one which contains only what concerns him, or what he desires to take advantage of in court, and not the other matters set forth in said document; except where the other party desires to call in question the entire will or document, for the reason that it is forged.

LAW CXIV.**Instruments Should Be Considered Valid Where They Do Not Contain Any of the Forgeries or Omissions Above Mentioned.**

Instruments should be valid in order to prove by their means the matters concerning which they were made, where they do not contain any of the forgeries or omissions which we have previously mentioned in the laws of this Title, and on account of which they should be rejected; but we also desire to explain them here, in order that men may learn their character with more certainty. Wherefore we decree that if they were sealed with the seal of the king, or with that of an archbishop, or of a bishop, or of a chapter, or of a consecrated abbot, or of a master of an order of knights, they will be valid as against the party who ordered them to be sealed for the purpose of proving their contents. And we decree that a paper shall be considered valid which has been sealed with the seal of a count, or of a nobleman entitled to have a banner, or of a council.

We also decree that every document drawn up by a notary public, and which contains the names of at least two witnesses, and the day, the month, and the era in which it was executed, as we have previously shown, will be valid to prove what is stated in it; and we decree that the same rule applies to a document not drawn up by a notary public, but which was written by another party and signed by two witnesses, for it will be valid during the lives of those who subscribed their names thereto, they admitting that the contract was made as stated by the said instrument. This is understood to refer to such an agreement as can be proved by two witnesses.

We also decree that where a party draws up a paper himself, or orders another to do so, which is contrary to his own interest, or impresses his seal upon the same, the said paper can be introduced against him in evidence, where the suit is brought by the party who drew it up, or ordered this to be done; as, for instance, when the suit is brought for a loan of grain, money, or any other personal property which can be counted, weighed, or measured. If, however, the party whose name was written in the document denies it, it should not be admitted against him, unless the other party proves that he executed it, or that it was drawn up by his order. But where an instrument of this kind was drawn up on account of some particular transaction as, for instance, a sale, or the exchange of a house, a vineyard, or some other property of this kind, such a document is not valid to make the proof complete, although it gives rise to a presumption. This is the case for the reason that documents relating to contracts of this kind should be drawn up by notaries public, or others, and signed by reliable witnesses, in order that neither forgery or fraud may be committed by their means.

Moreover, we decree, that every privilege or letter of the king drawn up in the way that is customary, during the life of the king mentioned herein, although it may not be sealed, shall be admitted in court, because we find that there were some kings who were not accustomed to seal their letters, but made their marks in them. And although documents and privileges of this kind may be ancient, or some letters be missing in them; or they may have been gnawed by rats, or eaten by worms or by something else; or have been wet with water; provided only they can be read and their true meaning understood, these things do not affect their authenticity, and they are valid, as we have previously shown. If, however, the party against whom they are introduced into court should desire to prove that they are forged, or should give some other reason why they ought not to be valid he should be heard.

All that we have stated concerning privileges and documents which should be admitted in court is understood to mean that when a party desires to profit

by them he must produce the original document or privilege, and not a copy of the same. For if a party, in order to prove his case, wishes to make use of a copy of any document or privilege in court, it should not be admitted, unless the original from which it was taken is produced; except where the said copy has been legally authenticated and impressed with the seal of the king, or of some other lord which should be accepted and is not liable to suspicion.

LAW CXV.

For What Reasons Public Documents Introduced By Parties Into Court, Should Be Believed, and for What Reasons They Should Not.

Parties frequently introduce into court before a judge publicly executed documents to prove their cases, and the party against whom the document is produced says, in opposition to it, that it should not be believed because the person who drew it up, and whose name is written in it, is not a notary public. When a controversy of this kind arises, we decree that the judge shall order that the party who introduces the document in court, if he desires to profit by it, must establish its authenticity by proving that the man whom the document itself says drew it up, was a notary public; or that, in the place where it was made, he was considered a notary public, and that it was reported among the men of that neighborhood that he was one and practiced that profession. Where these matters have been proved the document should be admitted in court, but where any of them are not established, it should not be considered valid, or be entitled to belief.

When the notary public whose name is written in the document appears before a judge, and states that he did not write it, he should be believed, and the document be rejected as a forgery, where the party does not prove the contrary. But where he admits that he really did write it, and the witnesses, whose names are subscribed thereto, state that they were not present when the contract was made, and that the parties did not agree to the same as set forth in the document; then we decree that if the notary is a man of good reputation, and it is found that the memorandum written in his register agrees with the said document, the notary, and not the witnesses, should be believed, and the document will be valid. This is the case because it frequently happens that men are witnesses to contracts which they do not afterwards remember; and therefore, since the memorandum agrees with the document, and the notary is a man of good repute, it is right that he should be believed. For this reason men reduce contracts and agreements to writing, so that, even if those who make them and the witnesses in whose presence they are made do not recollect them, remembrance of them may always exist, how they were entered into and in what way the parties agreed to their provisions. Where, however, the notary is not of good repute, and the witnesses are reliable men, and the contract or agreement set forth in the document to the same agree with one another, they, and not the notary, should be believed.

LAW CXVI.

Where a Party States that a Document Is Forged, the Judge Should Compel Him to Swear that He Does Not Make This Statement Maliciously, and Give Him Time to Prove It.

One of the parties may happen to show the judge a document in court to prove his case, or as a defense, and the other party, against whom he introduces it, may declare that it should not be believed for the reason that it is forged, and he desires to prove this; in a case of this kind, we decree that a judge shall take the oath of the party that he does not make this statement

maliciously, and give him time in which to prove it. If the party who introduces the document says that there is no reason to give him time because he does not intend to make further use of the same, the judge should admit it, but if he should afterwards wish to make use of said document in court, it should not be believed or profit him, even though the party may desire to prove that it was genuine.

Moreover, we decree that when anyone desires to prove that a document introduced against him is forged, he can do so before final judgment has been rendered in the suit in which it is produced, and even after that, before a judge of a court of appeal. But where a decision is rendered against him, based upon said document which he declared to be forged, and concerning which he did not take an appeal, or if he did appeal he lost his suit in the higher court, he should not be heard afterwards, although he may allege that the decision rendered against him was based upon said forged document. This is the case for the reason that he had already stated once that the said document was forged, and was unable to prove it, and judgment was rendered against him and he did not appeal, or if he did appeal he afterwards lost this suit in the appellate court, as above stated. But where the case was lost by reason of a forged document, and the party against whom it was introduced in court did not state, during the whole time that the suit lasted, that said document was false and that he wished to prove this; and, after he had lost his case and judgment had been rendered against him, he should state that it was based upon a forged document and that he desired to prove it, he should be heard, even though he did not appeal from the judgment rendered against him.

LAW CXVII.

**For What Reason a Document Publicly Executed Should Not Be Believed,
Where the Party Against Whom It was Introduced Can Prove
the Contrary of What It Contains.**

When a man introduces a document into court against another party, by means of which he desires to prove and establish that he owed him something, and the party against whom the document is being used states that it should not be deemed valid, or be introduced in evidence against him, for the reason that he desires to prove that during the whole of the day mentioned in the document as the one on which he made the contract, he was so far away from the place where said document was alleged to have been executed that no man in the world, by any means whatever, could have reached said place; wherefore, we decree that whoever advances a reason of this kind to abrogate a document which is being used against him, should be heard in the following manner to-wit: if the instrument which he desires to abrogate was drawn up by a notary public, and he can establish that by another instrument executed in his presence, and which he subscribed as a witness; or where he had entered into an agreement with another party, or another party with him in the place aforesaid, on the day which he mentioned, as aforesaid; or can prove his presence there by four good and trustworthy men, this shall avail him, and the document introduced against him shall not be believed. Where the document which he desires to have abrogated was not drawn up by a notary public, it will be sufficient for him to prove the fact above-mentioned by two witnesses who are not liable to suspicion, and who are men whose testimony should be admitted.

LAW CXVIII.**Where a Party Desires to Exclude a Public Document, the Judge Should Diligently Consider the Characters of the Handwriting of the Document in Order to Determine Whether It Is Genuine or Not.**

Where either of the parties desires to exclude a public document introduced in court against him, alleging that it should not be believed because it was not written in the hand of the party who states that he drew it up and whose name is written therein; and says that he wishes to prove this by introducing another document drawn up in the hand of the same notary, which does not correspond with the first one either in handwriting or in form; we decree that in a case of this kind, or in any other similar to it, where the notary whose name is written in the document is living, the judge shall compel him to appear before him, show him the said documents and ask him if he drew them up, and if he admits that he did so—although the said documents may be unlike in handwriting or in form—they should be believed, for the reason that one man cannot always write in the same way, as sometimes the variations of the weather, when hand-writing is done, and changes of the ink or the pen cause letters to be dissimilar. Moreover, the shape of the handwriting may differ on account of the infirmity or age of the notary, for a man writes in one way when he is young and healthy, and in another when he is old and decrepit.

But where a notary states that he did not draw up the first document introduced into court it ought not to be admitted, and if the notary should not be living, or is absent in such a distant country that access cannot be obtained to him to ask him this; then the judge should take both documents, and consult with reliable and learned men who know how to recognize and understand the forms and shapes of letters, and their variations, and cause them to be sworn that they will consider and examine this matter well and faithfully, and will not fail truthfully to tell the conclusion at which they arrive, without being influenced by entreaty or fear, by love or hatred, or by any other motive whatsoever. He should also cause both the parties to the suit to be sworn, and first the one who desires to have the document rejected should swear that he does not do this maliciously, but that he has no other way but this by which he can have said document excluded, and the other party should also be sworn that he has not done, and will not do, anything by means of which the truth of said document may be concealed. The judge should then call together some learned men, and with them consider and examine closely the handwriting and the appearance and shape of the same, and the sign of the notary, and if they all agree that the handwriting is so dissimilar that a reasonable suspicion may exist against it, it is in the discretion of the judge to reject the said document, or accept it as valid, if he should so desire. For the wise men of the ancients, for the reasons which we have previously stated, held that proof of this kind was not conclusive, and on this account they left it to the discretion of the judge to accept said evidence, if he thought or believed it to be just and true, or to reject it, if he sincerely thought the opposite.

LAW CXIX.**What Other Kinds of Evidence Men Make Use of in Court to Prove Their Cases.**

Men use different kinds of evidence to prove their cases in court, as we have shown in the laws of this Title. For not only do they introduce proof by witnesses, and by public documents, but also by others drawn up by the hands of men who are not notaries public. And for this reason we decree

that if any of the parties introduces a document into court, which was executed by the party against whom the suit was brought, or by anyone else by his command, and the contract or agreement set forth in it is reasonable, and is worded as follows, to wit; "that So-and-So owes So-and-So so-many maravedis, which he loaned him or deposited with him, or which it is proper to pay him for any other suitable reason whatsoever;" and the party against whom a paper of this kind is introduced admits the same, it shall be valid, just as if it had been drawn up by a notary public. But where he denies it, stating that he did not execute it, or order this to be done, and the party who wishes to take advantage of it says that he did, and that he desires him to take oath with regard to it; then the party is bound to swear whether he executed it, or ordered it to be executed, or did not. Where the said party does not require an oath of this kind, but states that he wishes to prove it in the following manner, to wit; by showing another paper, known to have been written by said party himself, which exactly resembles in handwriting and in the shape of the letters the one introduced against him; in a case like this we decree that he shall not be believed, except where he can prove by two good witnesses, to whom no suspicion attaches, that the other party wrote said paper or ordered it to be written.

We also decree that where either of the parties introduces a paper into court to prove his case, which has not been drawn up by a notary public, and the other party, desiring to have it rejected, produces another paper written in the hand of that same man which is unlike the first in every respect, both in the handwriting and in the shape of the letters: and the party who introduces said paper to establish his case by it, proves by two good witnesses, who are without suspicion and who swear and state that they saw the party whose name is written in said paper write it, or order it to be written; where such proof is made said party shall be believed, even though the other party may introduce another paper written by the hand of the same man, which is unlike it in every respect, in the handwriting as well as in the form of the letters.

LAW CXX.

A Guardian Cannot Dispute An Inventory in Which He Caused All the Property of a Minor to Be Listed.

A guardian who has received the property of any minor in charge, and has caused a document to be drawn up, showing the amount of said property when he received it, (which said document is called an inventory) and, afterwards, at the time when he rendered an account of his property to the minor, he makes a statement in contradiction to said document, wishing to prove that there were some things in excess of what he had received, and that he knowingly had consented to their being included therein, in order to make the minor to appear more wealthy, that he might contract a better marriage, or for some other reason like this; we order that a contradiction of this kind is not sufficient or valid, even though the guardian may desire to prove what he says, for no man should be suppose to have acknowledged in writing the receipt of property which he had not received.¹

¹ This is in accordance with the general principle of law that a man cannot avoid his own act when it has been solemnly and deliberately performed, except in cases where he was the victim of gross and manifest force or fraud. The Common Law doctrine that a party is estopped by his own deed executed under the sanction of public authority which precludes him from alleging anything contradictory to it, is specifically recognized by the Code of Justinian; "*Nimis enim indignum esse indicamus, quod sua quisque voce dilucide protestatus est, id in eundem casum infirmare, testimonioque proprio resistere.*" (Corp. Jur. Civ. Cod. IV-XXX-13.)—Ed.

LAW CXXI.**Matters Written in Books Which Men Keep As Memoranda, Cannot Be Used to the Prejudice of Those Against Whom They Are Written.**

Men write down what others owe them and what they themselves owe, in memorandum books to assist their memory, and sometimes they write down what is true, and sometimes the contrary through forgetfulness or malice; for which reason we decree that where it is found in the memorandum book of any man who is deceased that some other person owes him something or should do something for him, an entry of this kind ought not to be believed, or be considered as evidence, although he who wrote it may appear to have been a good man and have sworn that it was true; for it would be unreasonable and contrary to justice for a man to have the power to make others his debtors, merely by what he has himself written, whenever he may desire to do so.

Moreover, we decree that where a man, at the point of death, states and orders it to be put in writing that So-and-So is his debtor, and owes him a certain sum, as, for instance, ten maravedis, and the truth was that he owed him twenty; and the heirs of the deceased can prove this; neither the statement of the deceased nor the written memorandum will be any hindrance to them, but we declare that they can bring suit for and collect the twenty maravedis, if they desire to do so. This is the case because every man may well suspect that the deceased made the memorandum or spoke the words by mistake, since his heirs proved that the amount was twenty maravedis. But if, before he died, he declared, or a paper written in his own hand, or written by another party by his direction was found, stating that if So-and-So owed him more than ten maravedis he released him from payment from all over and above that sum; or if he should swear that he did not owe him more than the said amount, then his heirs cannot claim more from him than what he said was due, although they may wish to prove that the debt was larger.

TITLE XIX.

Concerning Notaries, How Many Kinds There Are, and What Benefit Is Derived from Their Office When They Perform Their Duties Faithfully.

Fidelity is an excellent quality which is becoming to every man, and especially to notaries, who are appointed to draw up the ordinances of kings, or other documents called "public," executed in cities and towns; as lords, as well as the people have the confidence to entrust to them all the acts, contracts, and agreements which they have to perform, or state, in court or out of it. Wherefore, since in the preceding Title we spoke of written documents introduced into court by way of evidence, we desire in this Title to speak of the notaries whose duty it is to draw these up; and, in the first place, to explain what the word notary means; how many kinds of them there are; what advantage results from their office when they perform their duties faithfully; what kind of men they should be, and who can appoint them; in what way they should be examined and appointed; what they should observe; and what reward they should receive when they perform their duties well, and what penalty when they perform them ill.

LAW I.

What the Word Notary Means.

A notary means a man who is skilled in writing, and there are two kinds of these. First, those who draw up privileges and royal ordinances, and the judicial decisions of the palace of the king, and others who are notaries public, and draw up bills of sale, purchases, contracts, and agreements which men enter into among themselves in cities and in towns. The benefit derived from them is very great when they perform their duties well and faithfully, for by their own acts they despatch and conclude matters which are necessary in the kingdom; and the memory of past events is preserved in their registers, in the memoranda which they keep, and the documents which they draw up, as we have shown in the preceding Title which treats of written instruments.¹

LAW II.

What Kind of Men Notaries Should Be, and Why They Should Be of Good Reputation.

The notaries of the Court of the King should be faithful, reliable, and intelligent, and know how to write properly, so that the papers which they draw up may well appear to have proceeded from the Court of the King, and have been drawn up by men of good understanding; and they should possess all the other good qualities which we mentioned in the Second Partida, in the laws relating to notaries, in the Title treating of the officers of the court and palace of the king. Moreover, we decree that notaries public, who are appointed in cities, towns, and other places, must be freemen, and Christians of good reputation, and they must also be skilled in writing, and intelligent in that art, so that they can thoroughly comprehend the statements and contracts which parties make and enter into with one another before them. They should also be men of discretion, so that wills and other documents which they are directed to write in secret may not be disclosed by them in any way, except where they are to the injury of the king or the kingdom.

¹ The notaries referred to in the *Partidas* not only exercised the functions of these public officials of our day, but also performed the duties of clerks and secretaries; and the term is used indiscriminately to denote anyone occupying either of these positions. The notary was a personage of great influence and importance in an age of general illiteracy, when a layman who could read and write was considered a prodigy of learning.—Ed.

We decree, moreover, that they shall be residents of the places where they act as notaries, that they may be the better acquainted with the men for whom they draw up documents; and they should be laymen, because it is their duty to draw up papers relating to investigations and other cases which involve the penalty of death or loss of limb, which is not suitable for a priest, or for other men belonging to a religious order; and also because if they commit any offence for which they deserve death or any other punishment, the king can inflict it upon them.

LAW III.

Who Should Appoint the Notaries in the Court of the King, or Those in Cities and Towns.

The appointment of notaries is a duty that belongs to an emperor or a king, and this is the case for the reason that they constitute, in fact, one of the branches of the government of the kingdom, for they are responsible for the preservation and genuineness of the ordinances issued by the Court of the King, and by cities and towns, and are, as it were, public witnesses in suits and contracts which men bring against, or make with, one another. For this reason no man should have the power of appointment to a place of such great responsibility, and one requiring such great loyalty as this, except an emperor or a king, or some one upon whom he has especially conferred authority to do so; for the wise men of the ancients, who made the laws, declared that the custody of matters which belong to the whole body of people in the kingdom should not be entrusted to anyone but the king, who is the head and sovereignty of the kingdom, and that no other person is as powerful as he to accomplish these things; and it is more fitting for him than for anyone else to remove the discord which ordinarily arose among men, when it was the custom to elect notaries. For if they had to do this they would very seldom agree, and, moreover, those who were appointed notaries would always consider themselves under obligations to promote the advantage of those who obtained the place for them, in preference to that of others; and so the common benefit of all, for which they should be appointed, would not be attained. We decree, however, that those who have the power to appoint judges in their districts, can also appoint notaries, to record the transactions which take place before them in court, but no one can appoint notaries public of a council whose instruments should be accepted throughout the entire kingdom, except those upon whom power has been especially conferred by the king to make such appointments, for the reasons which we have already stated.

LAW IV.

How Notaries Should Be Examined.

When notaries are brought before the king they should be examined to ascertain whether they know how to write, and whether they possess those good qualities which we mentioned in the preceding law. Moreover, when any persons appear before the king, who were brought there for the reason which we stated, whether as candidates for notaries of his court, or to make investigations where he happens to be, or elsewhere; the king should ascertain from those in his household who are most familiar with the facts whether they are such persons as we specified above, and prove it, and if they are persons of this kind he should accept them, otherwise not.

Where they are to be notaries in cities or towns, the king should ascertain from reliable men of the localities where these candidates live, from the in-

mates of the palace, and from any other persons whomsoever through whom he can best obtain information, whether they are such persons as we mentioned in the preceding law, and, if they are, they should, and can be accepted, and not under any other conditions. The notaries of the court of the king, however, should swear to draw up all documents faithfully without loss of time, and not to take into consideration either love, hate, fear, shame, entreaty, or any gift which may be given or promised them; and, above all, that they will keep the secrets of the king and protect his sovereignty, and his person, and his wife, his children, and everything belonging to him, according to the duties which they have to perform; and the notaries of cities and towns should swear that they will also protect the king, his sovereignty, and everything appertaining to him, as we stated above; and, in addition that they will keep secure the advantage and honor of his councils, as far as they may be able and know how to do so, and that they will draw up instruments faithfully, observing all those matters which we mentioned should be observed by the notaries of the king in drawing up royal ordinances.

LAW V.

What Things Notaries Should Observe.

As we shall state in this law, notaries must observe the things which we explain here, and when they do this they will properly perform the duties for which they are appointed. The matters which they should observe are the following: First, when the king orders them to draw up any documents in secrecy, they should not show them to anyone, or make any sign or token, by themselves or by anyone else, by means of which what said document contains may be understood, except to the persons to whom the king orders them to be shown, unless to a chancellor, a notary, a judge, or a sealer; and, moreover, they should see that the documents which they are ordered to prepare are drawn up by their own hands, and not give them to some one else for that purpose.

If, however, they happen to be ill or labor under some other impediment, or some other emergency should arise so that they cannot comply with this provision, they can then order others to draw up said documents, but the parties who write them must sign their names to them, and state that they drew them up by the order of the other parties; and, after the latter have had them written they should themselves write with their own hands at the end of said documents that they directed them to be drawn up; and if they do this in any other way the said documents will be considered false and invalid, and they will be liable to be punished as forgers. Moreover, care should be taken that no words are inserted in judicial decrees which indicate partiality. Privileges which the king orders to be confirmed should remain as valid as they were during the reign of any sovereign, or afterwards at any specified time; and notaries should be careful not to insert in them any other words by which it may appear that they are confirmed without reserve, or that they will remain forever valid; for this would also be forgery, if they should do it themselves without any order of the king. Moreover, the letters which the king orders them to draw up to be sent to certain persons to hear or decide any case, should not be expressed in such a way as to appear that he orders them to make such decision without hearing the arguments of both parties. They should also be careful that the form in which they are ordered to draw up papers, no matter what it may be, is not changed for another, but that each one is worded in the proper manner.

LAW VI.**What Notaries Should Observe in Drawing Up Letters Relating to Simple Justice.**

Letters of simple justice are those which the king, or his judges, order to be drawn up by reason of the complaints of persons who desire to obtain justice. In preparing letters of this kind notaries should be careful to insert in them (after all the reasons have been given) a statement like the following; for instance, where the complainant obtained the letter, that those to whom he goes should do, or carry out what is set forth in said letter. We also decree that if a notary should forget to insert this in the letter, it shall always be understood even though it is omitted, and that the judges to whom it is directed shall understand it in this manner, and summon both parties, and decide between them according to law and justice.

LAW VII.**Notaries of the Court of the King, and Those of Cities and Towns Should Write Out Everything in Full, and Not Use Abbreviations.**

Notaries of the Court of the King, as well as those of cities and towns should write out everything in full, and not make use of abbreviations in the privileges and ordinances which they draw up concerning the special matters, which we shall mention in this law, in order to guard against mistakes or disputes in their writings. This means that in the privileges and ordinances of every kind whatsoever which they draw up they do not use a single letter, instead of the name of a man or woman, as, for instance, "A", for Alfonso, or do this in the names of places, or in any account of money, or in anything else, as, for instance, "C" for a hundred, and they should take the same care with regard to the era which they insert in the ordinance. We decree that a privilege or ordinance drawn up by any notary who acts in any other way, than that directed by this law, shall not be valid, and that he shall be required to make good any loss or injury suffered by the party on this account.

LAW VIII.**What Advantages Are Derived from Making Records, and What Recorders Should Do and Observe.**

Other notaries belonging to the palace of the king, who are appointed to record documents in books called registers, are designated recorders; and we desire to state here why these books have this name, what advantages are derived from them, and what the clerks who make these records should observe and do. We declare that a register means a book made to preserve the remembrance of ordinances and privileges which are granted. It is of advantage for the reason that if the privilege or ordinance is lost, or defaced, or the writing becomes illegible through age, or where any doubt arises concerning it on account of its being erased, or for any other reason whatsoever; what is lost can be ascertained, and what is illegible through age can be renewed by means of the register, and, moreover, all doubts can be solved concerning other documents of which men are suspicious.

There is also another advantage, as, where a paper is given which should not be granted, it can be proved by means of the record who gave it, or in what way it was given. And what recorders should observe and do is as follows, namely; they should write documents faithfully as they are given to them, not taking anything from, or adding anything to them, and they should

not show their records except to a notary or a sealer, or to some one else by command of the king, or by order of the above-named persons, or by that of those who have authority to sit in court, or render decisions, where they have need of any document relating to the duties which they have to discharge; and recorders should sign their registers every month, in order that the transactions therein contained may be known with more certainty, and, by this means, be ascertained at the end of the year.

LAW IX.

What the Notaries of Cities and Towns Should Observe and Do.

Notaries public of cities and towns are required to observe and do everything which we mention here. In the first place, they should keep a book as a register, in which to record the memoranda of all documents in the way ordered by the judge, or as the parties agree among themselves, and, in their presence direct them to draw any paper. After this they should draw up said documents, observing the form of each one of them as previously stated in the Title concerning Written Instruments, not altering or changing anything of the substance of the matter as it was entered in the register; and they are also required to give to the party the paper to which he is entitled, although the other party may forbid it, except where this is prohibited by the judge for some good reason offered by the other party. On this account we order it to be recorded in the register, so that if the document should be lost or any doubt arise concerning it, it may be the more easily proved by this means, as we stated in the preceding law, concerning ordinances drawn up in the Court of the King. We also decree that there should be another register in every city and town, in which all the accounts of the revenues of its council shall be kept, in order to ascertain their amounts; because in case the king should wish to demand a statement of how said revenues were expended, this can be ascertained by this means, and that property may not be demanded of persons who are not to blame.

LAW X.

A Notary Should Rewrite a Document When the Party to Whom He Gave It States That He Has Lost It.

It could easily happen where a man had in his possession a document drawn up by a notary public that he might lose it, or it be stolen from him, and he return to the notary who drew it up to have him prepare another. And, for the reason that there are persons who make this request maliciously, we, in order to guard notaries from error, desire to show in this law a certain way by which they can protect themselves. We decree that if the document said to be lost relates to a purchase, a sale, an exchange, a will, or a power of attorney, or to anything else similar to these, which are of such a character that, although duplicates may be produced, no injury can result to the other party for this reason; the notary can, and of himself ought to, draw up a copy of said document, taking it from said register, word it exactly as the first one alleged to have been lost was worded, and give it to the party to whom it belongs. But where an instrument which a notary is asked to draw up a second time because the first one is lost, relates to a debt owing from one person to another, whether it be one of money or of any other property for which suit can be brought as many times as such an instrument is produced, a notary should not rewrite it, or deliver it on his own responsibility; for it may have been requested for purposes of fraud after the said debt had been paid or released, and great injury may result to the other party for this reason. We decree that

the party asking it must go before a judge, and cause his debtor, by whom the instrument was executed, to be summoned, and if said debtor admits, in the presence of the judge that he owes the debt to which the instrument relates, and does not object to its being drawn up a second time, then the judge shall cause the party making the request to be sworn as follows: "Thou dost swear that the instrument which thou dost request to be drawn up a second time is actually lost, and that thou dost not know where it is or who has it; and that it was not lost through fraud or malice on thy part, and that if, at any time thou dost recover it, thou will return it, torn and cancelled to the notary who wrote it, and that thou will never make use of it to the injury of thy opponent."

When the judge has taken the oath of the party in this way, he should order the notary to draw up the instrument a second time, just exactly as he finds it recorded in his register, and deliver it to the party who requests it, and the notary should do so; and in the place where he writes his name in said instrument, he should say as follows: "I, So-and-So, notary public, was present at all the transactions mentioned in this instrument, and at the request of the parties I wrote it, and placed my notarial sign therein. And this instrument I, myself, drew up a second time, and I now do so by order of So-and-So, judge, for the reason that the debtor therein mentioned was summoned, and admitted the obligation in the presence of said judge, and that he had no objection to offer to its being drawn up a second time; and, also, because the party who made the request swore that he had actually lost the first one, and that he had not acted through fraud." When the notary has drawn up the instrument in the manner aforesaid, he should deliver it to the party who requested it and to whom it belongs. And in order that the debtor against whom an instrument of this kind was drawn up may not be able to say that it was done without his knowledge and consent, the judge should be careful to compel the notary to record the entire transaction in his register, relating to the instrument which he ordered to be rewritten just as it took place before him.

LAW XI.

How a Notary Should Draw Up an Instrument the Second Time Where the Party Against Whom It Was Made Was Summoned and Refused to Come, or If He Did Come, Was Unwilling to Give His Consent.

Where a party who is the debtor of another is summoned to appear before a judge, at the instance of his opponent, who asks that the evidence of a debt which he holds against him, should be drawn up a second time because he had lost the first one, as we stated in the preceding law; and the said party is obstinate, and is unwilling to come or to send an attorney to oppose it; then the judge should take the oath of the party asking for the instrument, in the same way as we have above stated, and should also compel him to swear that he has not been paid the said debt concerning which he asks the paper to be rewritten. After he has taken this oath he should order the notary to rewrite the paper and deliver it to him, and the notary should do so, but in the place where he writes his name he should follow the same form which we mentioned in the preceding law; except that he should state that the debtor had been summoned and was unwilling to come or send anyone to oppose the said instrument. But where a debtor is summoned as we stated above, and appears before a judge, and denies that he owes the party who asks for the instrument and opposes its being drawn up again; then the judge should give him time to prove that he has paid said debt, and if he is unable to do this, the judge should take the oath of the party who asks for the instrument in the way we mentioned above, and order the notary to draw it up a second time and deliver it

to him, and the notary should do this, as previously stated. Where, however, the debtor proves that he has made payment, then the instrument demanded by the other party should not be rewritten.

We also decree that where a debtor opposes the drawing up of such an instrument a second time, for the following reason, namely; because the one which is said to have been lost is in his own possession, and that the other party had returned it to him, intending to release him from the debt, and he can prove his statements; the instrument should not be drawn up again, and we decree that he shall be released from all liability for said debt. This is the case when the instrument concerning which the dispute arose is not torn or cancelled; but where the paper which the notary is asked to draw up a second time is torn or cancelled, or in the possession of the party against whom it was made, and, for this reason, the latter opposes its being rewritten, and the other party replies that he had lost it, or that it had been stolen from him, and had come into the possession of his debtor without his consent; then, if he is able to prove that it was lost for any of these reasons, the judge ought to order the notary to draw it up again and deliver it to him, and the notary should do so. When he is unable to do this, and the torn or cancelled paper is found in the possession of the other party against whom it was made, as above stated, then it should not be drawn up a second time; for the reason that the wise men of the ancients presumed, in a case of this kind, that the debtor had been released from the debt.

LAW XII.

What a Notary Ought to Do When Anyone Asks Him to Renew a Document Which Is Old.

Papers drawn up by notaries public are sometimes injured by accident or through carelessness, so that they cannot be read as well as at first, and, for this reason, we decree that when anyone asks a notary to renew a paper of this kind, and he finds that it is not erased in any part liable to suspicion, or effaced so that it cannot be read; or is scraped or torn in such a way that the tear does not extend to the writing, and it relates to a debt; the party against whom it is made should be summoned to appear before a judge, if he wishes to say anything against the allegations of his opponent, and if he does not desire to oppose the renewal of the instrument; or states that he has paid the debt, or has been released from its payment, but is unable to prove this; the judge should order the notary to renew it in the terms he finds set forth in his register from which the said instrument was taken in the first place; but where the instrument related to a gift or a purchase, or an exchange, or any other matter of such a character that, although several papers of the said kind might be produced they could not injure another party; and provided said instrument is not torn as far as the handwriting, or cancelled or mutilated in a suspicious part; as, for instance, when the names of the parties who drew up the contract are erased, or those of the witnesses, or that of the notary, or the amount of the consideration, or the name of the property, or that of the day, the month, or the era, or the place where the instrument was dated; then the notary can draw it up again, at his own instance, without the order of the judge, comparing it with the register from which it was originally taken; and we also decree that an instrument of this kind, if it can only be read and show truly the meaning of what it contains, shall be believed in court, even though it is not renewed.

We decree, moreover, that where the mutilation or cancellation of said instrument is in any of the above mentioned places, it shall not be believed in court, or renewed, except where the party who produces it, can prove that

some one else caused said mutilation or cancellation accidentally, or by violence, or without his consent. In a case of this kind his rights should not be prejudiced, but we decree that where he can prove what he says it shall be accepted, just as if the paper had not been cancelled or torn, and that it must be renewed without any hindrance, if he requests it, by comparing it with, or taking it from, the register from which it was copied in the first place. The notary public who renews such a paper should, however, write in the place where he subscribes his name the reason why he was obliged to renew it.

LAW XIII.

What Notaries of the King's Palace Should Receive for Privileges and Ordinances Which They Draw Up on Leather Parchment.

Men who draw up papers of the kind which we have mentioned should be rewarded for their labor, and as we treated in the first place of notaries who prepare documents in the Court of the King, we also desire to speak of them first here, and to show what compensation they should have for their work; for, although kings reward them and favor them in other ways, it is just that they should receive some compensation from those for whom they draw up these papers, as we shall show in these laws. We shall afterwards speak of others who draw up papers in cities and towns, and we desire it to be known what both kinds of notaries are entitled to receive, and what men should give them for the documents of every kind whatsoever which we have mentioned that they draw up for them; but we order that of the notaries belonging to the Court of the King, each one who draws up a privilege shall receive as compensation one maravedi for his sign, and for writing the same; and for a document with a leaden seal which contains no sign,¹ half a maravedi; and for an open document, sealed with wax, impressed with the great seal, half a maravedi.

LAW XIV.

How Notaries of Cities and Towns Should Be Protected and Honored.

We desire men to know how notaries of cities and towns should be protected and honored, for the reason that they occupy a position for the common benefit of all. We have already stated in the Second Book how notaries of the Court of the King should be honored and protected, and therefore it is proper for us to speak of them here. We decree that whoever treats with dishonor, or wounds one of them shall pay twice as much as he would have had to pay if the party did not hold this position, as is directed by these laws in the Title concerning Penalties. Any persons who kills one of them shall be put to death, unless he gives a lawful reason for doing so, as stated in the Title concerning Homicides.

¹ The *signo*, or official sign of the notary, as well as the *rubrica* of the private individual, to both of which Spaniards attach so much importance that they may be considered as integral parts of the signature itself, possess their distinctive characteristics, and, if omitted, would go far towards invalidating a document, or would cast suspicion upon the genuineness of the alleged sign manual of a witness or a testator. It may possibly have been derived from an addition to the "mark", formerly in almost universal use by persons who could not write and had no seals, which still survives in the scroll appended to signatures in some of our States.—Ed.

LAW XV.

How Much Notaries of Cities and Towns Should Receive for the Papers Which They Draw Up.

Notaries of cities and towns should receive compensation for the labor which they perform in drawing up papers. Wherefore, we decree that when one of them draws up an instrument relating to property worth more than a thousand maravedis, he shall receive from the party for whom he does this four *sueldos*.¹ Where the instrument relates to property under a thousand maravedis in value, down to a hundred maravedis, two *sueldos* should be paid for it; and for all under a hundred maravedis one *sueldo*; and where papers are drawn up with reference to bequests, marriage contracts, partitions, or enfranchisements, notaries are entitled to six *sueldos* for each one. For an instrument which they draw up for Jews, concerning debts which men owe them, they are entitled to receive for each one in value above a thousand maravedis; or under that amount, half of what we have stated above, with reference to papers drawn up for Christians. Where they draw up bills of sale or purchase, or documents relating to the other matters we previously mentioned for Jews or for Moors, the latter should give for each one of these as much as Christians do; and what we stated in this Title they should pay for privileges and documents, we decree shall be in the best money current in the country which is not gold or silver.

LAW XVI.

What Punishment Notaries of the King's Palace and Those of Cities Should Receive, Who Commit Forgery While in Office.

When a notary belonging to the Court of the King commits forgery in any ordinance or privilege he shall be put to death. If he intentionally reveals a secret, which the king ordered him to keep, to any man from whose acts injury may result to the king, he should inflict such punishment upon him as he thinks he deserves; and if the notary of a city or town should draw up a forged paper, or commit any forgery in court in any agreement which he is ordered to write, the hand with which he did this shall be cut off, and he shall be considered infamous, so that he cannot be a witness, or be honored while he lives.

¹The *sueldo* was a silver coin whose name was taken from the *solidus*, a gold piece struck by Constantine the Great, instead of the Roman *aureus*, and subsequently known as the byzant. The *solidi* of the Visigoths were of both gold and silver, and were worth respectively about \$56.00 and \$44.00 of our money. The *sueldo* of Spain, still current in Aragon, is equal to half a *real*. From the *solidus* and *sueldo* of the Middle Ages come the French *sou* and the English shilling, designated in the coinage of the latter by "s"; the abbreviations "L. s. d." corresponding in arrangement, but not in value, to the *librae*, *solidi*, and *denarii* of the Visigothic Empire. The *sueldo* of the *Partidas* would now be worth nearly \$3.00. The *dinero*, mentioned elsewhere, is a general term referring to the most common coin in circulation, although there was an ancient copper piece of that name current in the Peninsula.--Ed.

TITLE XX.

Concerning Seals, and the Sealers of the Chancellor.

Sealers are a kind of officers who it is very proper should possess good qualities, and be exceedingly diligent in taking care of seals, and in sealing papers, for according to the custom of these times, sealing an instrument contributes greatly to prove its genuineness and credibility. Wherefore, since in the preceding Title we spoke of notaries we intend in this one to speak of sealers, and in the first place to show what the seal is; why it was invented; what advantage is derived from it, which seal establishes proof, and which does not; who can appoint sealers who have charge of the seals, and what kind of men they should be; how many there are; what they should do and observe; and what compensation sealers should receive when they perform their duties well, or what penalty they deserve when they perform them badly. And above all we shall speak of the chancery.

LAW I.

What a Seal Is, for What Purpose It Was Invented, What Advantage Is Derived from It, and Which Seals Establish Proof and Which Do Not.

A seal is a device which a king, or any other man whosoever, orders to be traced on metal or stone, in order to sign his papers by means of it, and it was invented in ancient times that it might be impressed upon a paper as a witness of the matters described in the same; and it is advantageous to many things, for by its agency the donations, lands, and estates which lords grant to their vassals, are held by the latter safely and securely. Moreover, messages which men send by letter are better preserved, and are carried with greater secrecy by being enclosed by a seal; and all matters which men have to decide by means of written documents are better determined, and are more worthy of belief, when their seals are impressed upon them by way of testimony; for which reason every man who has charge of the seal of the king, or that of any other lord whomsoever should take great care of it, and make use of it faithfully, so that no forged document may be sealed by its means. The seal of a king, or an emperor, or any other lord of high rank, impressed upon any document, proves it in court. The seals of other men are not evidence against anyone except those to whom they belong, as we previously explained.

LAW II.

Who Can Appoint Sealers in the Palace of the King, and in Cities or Towns, What Kind of Men They Should Be, and How Many.

A chancellor or notary, after he has received the seals from the hand of the king, should be very careful to whom he gives them for the purpose of sealing documents. Such persons are called sealers, and in cities and towns they should be appointed by the king, and we decree that they must be reliable and loyal men, of good lives and without covetousness; and they should be sworn, as we shall show hereafter; and those belonging to the Chancery of the King, should be as many in number as the king thinks are necessary to see that documents are drawn up properly and without errors; and those in cities and towns must be good and faithful men, and two of them should be appointed in each place. They should be attached to their country, and be men without turbulence, and one should have one plate and one the other, in order that the document may be sealed the more faithfully and without fraud.

LAW III.**What Sealers Belonging to the Court of the King, as Well as Those of Cities and Towns, Should Do and Observe, and How They Should Be Sworn.**

Truth and loyalty are virtues which men should be very careful to observe in all their acts, and we consider that this greatly concerns keepers of the seal, and especially those belonging to the palace of the king; for, since they have control of the seals of the king, if they do not observe these things, great injury may result to the sovereign and the kingdom, and keepers of seals in cities and towns should also practise these virtues; for though they do not have as great an office as those we have mentioned, or as much property, they are required to obey the same rules, for injury may result if they do not.

We also desire to state what both of them should do and observe, in order to preserve this truth and loyalty, and we decree that the first thing that keepers of the seals belonging to the Chancery of the King must do, is to swear in the hands of the sovereign that they will lawfully seal all documents, and will not seal any, unless it is stated therein that the king, the chancellor, a notary, or a judge, ordered this to be done; and that they will not reveal any secret of those contained in said document; and that they will not hinder any one in the preparation of any paper, or cause delay with regard to the same, induced either by love or hatred, or by any gift which may be given or promised them. And, moreover, the keepers of seals in cities and villages must take oath that they will seal those documents faithfully, which the council, or the majority of its members orders them to seal, and that they will not seal any paper which opposes the authority of the king, or is prejudicial to his rights, or which may be to the injury of the councils whose seals they hold; and that they will not fail to seal documents and will not place impediments in the way of those who are entitled to them, or delay their execution, through turbulence, or from their love or hatred of any person; or at the entreaty of anyone; or on account of any gift which may be given or promised them.

LAW IV.**Keepers of Seals Should Diligently Observe What Is Stated in the Preceding Law.**

We hold it to be right that keepers of seals belonging to the Chancery of the King, should be careful not to seal any privilege, or any open document, which can be declared void for any of the reasons stated in the Title concerning Notaries. They should also avoid sealing any document unless it has been recorded, or disclosing its contents without the command of the king, or of some of the others who have authority to order this to be done, as we stated in the preceding law; and they ought to be careful with documents which are enclosed, so that if any letter, or portion of them is lacking, they may cause the correction to be made, that they may not be incomplete. Moreover, they should be careful, if any document is brought to them which is contrary to the form used in the Court of the King, not to seal it, without showing it to the party who ordered it to be drawn up.

They should take care of their registers, so that they may not be lost; and cause documents to be recorded, each one in its appropriate register; and should see that the privileges of confirmation, to which they attach leaden seals, correspond with those from which they were copied; and they should diligently scrutinize the latter and see that they are not erased or blotted, and contain none of the errors for which they may be rejected, as we have already stated; and the keepers of seals of cities and towns should be sure when any

of them goes elsewhere, to leave in his place some reliable man in whom he has confidence, and who has judicial knowledge, who may seal such documents as are necessary, in order that the acts of his council or those of the persons entitled to such documents may not be obstructed. Moreover, those who are left in their places should, in the unsealed documents which they draw up, observe the rules which we have stated the keepers of the seals belonging to the Chancery of the King should observe.

LAW V.

What Compensation Keepers of Seals Should Have, and How They Should Be Honored and Protected.

Fearing that sealers may ask more than they ought for sealing documents, we desire to state in this law what compensation they should have for affixing a seal. We decree that the sealers belonging to the Chancery of the King should each receive as much as the other notaries of the king, and, moreover, they should ask for the privileges which they seal with lead, one maravedi for each, and for ordinances sealed with lead half a maravedi each. The sealers of cities and towns should receive for such documents as they seal for each one six *díneros* of the money in common circulation and which is expended throughout the country, and if they should take more than what is commanded by this law, the king should punish them as he thinks right. And we decree that the said sealers of the Chancery of the King shall receive the same honor and the same protection as other royal notaries and whoever dishonors them or wounds them shall suffer a similar penalty. And if anyone treats the sealers of cities and towns with dishonor in word or deed, or wounds or kills them, he shall suffer double the punishment that he would have suffered if they had not held the seal, as we stated above in the Title concerning Notaries.

LAW VI.

What the Word Chancery Means, and What Those Who Have Positions in It Are Required to Observe and to Do.

The Chancery is something which we should define and explain why it is so called, and what those who are employed in it should observe and do, and also what they should receive for their services. For this reason we declare that the chancery is a place where all documents should be brought to be sealed, and those whose duty it is to attend to this should carefully examine them, and tear and destroy those which are not regularly drawn up, and order those which are properly drawn up to be sealed. It is called the chancery for the following reason: because documents which are badly drawn should be destroyed and cancelled there; and what the said persons should observe is, not to accept documents from the hand of any other man but the notary or doorkeeper of the king. Secret documents which are given to anyone of those who are employed in the chancery, by order of the king or by the hand of any of his notaries, we decree shall be kept by the party to whom they are given, and not be shown except to the notaries, or those whose province it is to record them, and also to the officials whose duty it is to attach the seals to them, and preserve them. Moreover, they should not seal documents before they are recorded, except such as the king orders not to be recorded, and they should be careful not, through their fault, to cause delay to those who are entitled to privileges and letters, or take more for their services than what is hereafter specified in these laws. What they should do is as follows to-wit: to examine documents as soon as they are brought to them, and tear and

destroy such as are not properly drawn up, as we have previously stated; and at once deliver, to be registered, those that are properly drawn, and cause them to be sealed, in order that the parties who are entitled to have them may not be delayed; and they should return those which they have torn to the notaries who wrote them, or to those who ordered them to be drawn up, that they may correct whatever caused them to be destroyed. We shall show; hereafter, by other laws, what compensation they should receive and the reason why they receive it is for affixing the seal, and to pay the notaries for the work which is given them.

LAW VII.

How Much Should Be Paid to the Chancery for a Privilege, or for an Ordinance with a Leaden Seal.

Men being covetous of money sometimes charge more than they should, and for the reason that the Chancery of the King is established for the benefit of the entire community, we desire to prevent any injury resulting from it to those who cannot avoid transacting business there, and who have need of privileges or letters of any kind whatsoever. Wherefore we shall show what men should pay to those who are charged with the care and preservation of the Chancery, and also what the latter are entitled to for their services; and we decree that where the king orders a privilege to be granted to any town, with reference to some new *fuero* which he imposes upon it, a hundred maravedis shall be paid for such a privilege. When a new town is founded, and the king gives the inhabitants lands including hamlets within the boundaries of the same, they should pay fifty maravedis for the privilege. When there is no population within the boundaries of said new town, they should pay twenty maravedis for the privilege. When he annexes to an inhabited district any city or large town, a hundred maravedis should be paid for the privilege. Where the district is a wilderness the people should pay fifty maravedis for it. When the king annexes an inhabited district to any smaller town, the people should pay fifty maravedis for it, and if it was for the purpose of settlement, twenty maravedis; where, however, the uninhabited territory which he grants them is so large that it may be as much to the benefit of said town to which it is given, as another that is inhabited would be, the people must pay just as much for the privilege; and where it is still more to their advantage they should pay as much for it as the king deems just and proper. When he exempts any town from tax or toll, a hundred maravedis should be paid for each one of these privileges, and where he exempts any man from these said burdens, if he is rich he should pay fifty maravedis to the chancery, and if he is poor he should pay ten.

Moreover, we decree that any city or town to which the king grants a right to hold a fair, shall pay a hundred maravedis to the Chancery for the privilege; and any place to which he grants the right to hold a market, shall pay thirty maravedis. When the king gives a tract of land to a nobleman, which yields a rental of a hundred maravedis, the latter should pay thirty maravedis for the privilege, or for the grant; and where it is worth more, or less, whatever is just under the circumstances. Where the king grants lands to an archbishop or a bishop, or to any man of superior rank in a religious order, as, for instance, to a master, or a prior, or a commander, or a consecrated abbot, and grants said lands for the benefit of the order, a hundred maravedis should be paid for the privilege, or for the grant. If he grants lands whose rental is worth a hundred maravedis to anyone of said persons for himself, the latter should pay thirty maravedis for the privilege, or for the grant. Where he grants said land to any knight or priest belonging to his household,

or to a judge of his court, or to any individual belonging to his family, he should pay for the privilege or ordinance twenty maravedis, if the land yields a rental of a hundred, and if it is worth more or less than what is above stated, in proportion. Twenty maravedis should be paid for the confirmation of a district, or for a gift, or for lands granted to many persons in common, as, for instance, to men belonging to a religious order of any description whatsoever, or to a council; and we decree that a nobleman shall pay as much for a privilege of confirmation of a district, or of a tract of land; and for all other privileges of confirmation ten maravedis should be paid for each one.

LAW VIII.

How Much the Persons Mentioned in This Law Should Pay the Chancery for Their Commissions.

When the king gives a nobleman authority over land, or when he appoints a standardbearer, a steward, an *adelantado*, a *merino*, or a judge, they should pay the Chancery for their commissions the amounts stated in this law. Wherefore we decree that whenever the king confers a new grant of maravedis as a charge upon any land for the benefit of a nobleman, or for the profit of any one else whomsoever, the latter shall pay three maravedis to the Chancery for every hundred granted by the ordinance, all at once when he takes possession of the land, and no more; and when he appoints a standardbearer or a steward, each of them shall pay three hundred maravedis to the Chancery; and when he appoints a chancellor he shall pay five hundred maravedis; and when he appoints a chief notary he shall pay three hundred maravedis; and when he appoints a chief *merino*, or chief *adelantado* of his dominions, or a chief admiral, each of them shall pay two hundred maravedis. When he appoints an *alquazil* of his palace he shall pay thirty maravedis, for although these officials occupy a high position, for the reason that their labors are great and their income is small, we therefore deem it proper that those who perform their duties well and faithfully, should not pay more than thirty maravedis.

When he appoints a judge of his court, the latter should pay thirty maravedis, for if he performs his duty well and faithfully, he should rather prefer to obtain the love of God and of his king, than to accept the service, or grant the entreaties of men. When he appoints ambassadors to the country of the Moors, each of them should pay two hundred maravedis, and we make this decree for the reason that their profits are great, and of many kinds. When he appoints a chief cupbearer, doorkeeper, butler, or steward, each one of them should give forty maravedis for the appointment; and when he appoints a chief cook, or a chief equerry, or a hospitaller, or a falconer, each of these should pay twenty maravedis; and when the chief steward appoints some one to his place, the party appointed should pay twenty maravedis; and when he appoints a mayor, judge, or *merino* of any town or district if there is no chief *merino* there, each one of these should pay ten maravedis; and also when he appoints some one *adelantado* of a town, he should pay ten maravedis; and when the notary of a council is appointed to deliver the tribute of the Jews, each of the latter should pay five maravedis.

When anyone is made *rab*¹ of any extensive district, he should pay two hundred maravedis; and when the king appoints *almoxarifes* in large towns, each of them should pay a hundred maravedis, and when he appoints them in

¹This is a title of honor conferred upon eminent and learned personages invested with magisterial authority by the Jews, and inferior in dignity to that of rabbi. The right of appointment to the office was usurped by the Castilian sovereigns, just as the Khalifs, during the Hispano-Arab supremacy, arrogated to themselves the selection of the heads of the Christian Church.

smaller towns, each of them should pay fifty. When he appoints an old man of authority, which office is the same as that of *adelantado* among the Jews and Moors, and places him over a certain district to hear appeals and decide cases, a person of this kind should pay a hundred maravedis; but where he appoints him over any particular assembly he should pay twenty. What we have stated in this law as being due to the Chancery from officers belonging to the king's household, is understood to refer to those who receive from it commissions for said offices.

LAW IX.

What Should Be Paid to the Chancery for Letters of Arbitration.

Sometimes one council unites with another, or one nobleman joins another, or any other men whosoever agree concerning contracts or disputes which they have among themselves, or make agreements for exchanges, or for some other purpose and in order that the matter may be more secure, they ask as a favor of the king to grant them his letters; for which reason we decree that if the said agreement was between noblemen or bishops, or councils or religious orders, each one of the parties shall pay the Chancery twenty maravedis for the letter; and where the agreement was made by one man with another and he not one of those above-mentioned, both parties shall pay ten maravedis; but where the action or dispute existed between one council and another over boundaries, and they did not come to an agreement and the case was decided in court, the party who was successful and obtained the boundaries must pay the Chancery ten maravedis for the letter.

LAW X.

How Much Should Be Paid to the Chancery for a Letter by Which the King Grants, as a Favor, That Property Forbidden to Be Exported May Be Removed from the Kingdom.

Those who, without the order of the king venture to remove any property from the kingdom which they are forbidden by him to remove, are guilty of a great folly. Where, however, the king favors anyone and desires to give him his letter authorizing him to remove any prohibited property from the kingdom; we decree that he shall pay the Chancery for the letter the amount stated in this law; and where permission is given to remove gold, silver, wax, Cordovan leather, or any other prohibited property, the party shall pay out of the cost of the said property which he removes, one maravedi for every hundred, to the Chancery; and if the permit was given to remove horses, or pack animals, or mules, the party shall pay two maravedis for each horse, one maravedi for every pack-animal, and one maravedi for a mule. But where he gives a safe conduct to anyone to traverse his dominions with all his property the party shall pay five maravedis for it. Moreover, if anyone rents a port, or a salt-pit, or any other property from the king, he should pay the Chancery one maravedi for every two hundred of the rental the first time that he leases it.

LAW XI.

How Much Should Be Paid to the Chancery for a Copy of a Final Decision, and for Other Documents Mentioned in This Law.

Final judgments are frequently rendered in the court of the king of which it is necessary men should have copies, and they should also be given to those to whom property is ordered to be delivered. Wherefore we decree that when any persons have suits before the king, or before any magistrates

presiding in his palace, and they are given copies of the arguments, and of the decision as it was rendered; if there is no delivery whatever each party should pay five *sueldos* for a copy of this kind. Where a delivery is ordered to be made to either of said parties, he who is ordered to make said delivery must pay to the Chancery one maravedi out of every hundred. When the king grants a pardon to a person who deserves corporal punishment, a rich man must pay ten maravedis to the Chancery, and a poor man five. Where the pardon was with reference to money, the party must pay one maravedi out of every hundred; and, moreover, when any person renders an account to the king for which a receipt is given him, and the amount was as much as a thousand maravedis, he must pay one maravedi for the receipt; and where the amount is above a thousand maravedis, he must pay two maravedis for it. When the king sends a letter to anyone concerning maravedis which he owes him, and he deposits them for him in any particular place, he must pay to the Chancery one maravedi for every two hundred; and if he should pay for the letter once, and requires others for the same maravedis, he shall not pay anything for them. Where the king sends a letter to a council to collect the tribute of the Jews, a large town with its suburbs, should pay twelve maravedis; one of medium size six; and a smaller one three; and where any one takes a letter to a doorkeeper directing certain debts to be paid—whether the parties are Christians or Jews—he who obtained the letter must pay the Chancery one maravedi out of every hundred when they are delivered. If the bearer of the letter cannot obtain payment at once, the doorkeeper whose duty it is to make the delivery is required to collect said maravedis, and pay them over when he comes to the Chancery.

LAW XII.

What Should Be Paid to the Chancery for Letters That Are Enclosed.

There are other letters of various kinds which are enclosed, for which something ought also to be paid to the Chancery. We decree that where a letter is given to any person relating to maravedis which the king orders to be paid to him, where the amount varies from ten to a hundred, five *sueldos* shall be paid for said letter. Where the amount is above a hundred maravedis, one maravedi should be paid for every hundred; where the amount is under ten maravedis, nothing shall be paid for the letter, and where the party carries other letters relating to said maravedis, he shall not pay anything for them. Where the letter relates to simple justice, ordering the rights of the party as set forth in his complaint to be respected, he must pay for said letter five *sueldos*. Where the letter refers to simple justice which may be obtained by the order of some of the council, one maravedi should be paid for it.

For a letter which the king orders to be given to anyone, directing him to pay maravedis which he owes, one maravedi should be paid for said letter, if the debt amounted to a hundred maravedis, or more. For letters which have been obtained and lost, in consideration of a favor granted by the king in ordering them to be issued a second time, the same amount must be paid for them as at first. And all that we have mentioned above in this Title that should be paid to the Chancery by reason of privileges and letters, is understood to relate to such communities as do not give any specified description of property.

TITLE XXI.

Concerning Counsellors.

It is true, and all learned men admit it, that things which are done by advice are done with more regularity, and have a better conclusion than others which are not. And although this is applicable to all the acts which men have to perform, it is especially necessary to those persons whose duty it is to render judgment. For as a judgment means a just order, it is reasonable that, before it is rendered, the counsel of wise and learned men should be taken. For which reason since in the preceding Titles we spoke of the evidence which men introduce into court to prove their cases, we intend to speak in this of the advice which judges should take concerning said evidence, in order to render judgment equitably. We shall show in the first place what advice is; how it should be considered; in what way it is beneficial; when it should be taken; what kind of persons counsellors should be; in what matters they should be summoned; in what way they should give their advice; and what compensation they should receive when they give a judge good advice, and what punishment when they counsel him badly.

LAW I.

What Counsel Is, How It Should Be Considered, and in What Way It Is Beneficial.

Counsel is good judgment which a man takes concerning matters which are doubtful, in order that he may not fall into error, and the persons of whom counsel is asked should consider it carefully before they give it. Moreover, those who ask it should be prudent, and should carefully investigate those of whom they ask it, that they may be persons who know how to give good advice, and be willing and have the power to do so, for, in any other way, they would not give it sufficient consideration; and for this reason the wise men of the ancients said: "Do everything with advice, but carefully consider beforehand who he is with whom you are to take counsel." Great advantage arises from advice when it is well considered, and is given justly and at the proper time, for by means of it men decide and carry out measures with more certainty, security, and reason; more easily avoid the dangers which may come upon them, and do not subject their property to risk, and where good results from the advice they make lawful gains; and where they are exposed to dangers and suffer injury it is not their fault, and they are excusable in the sight of both God and man.

LAW II.

When Counsel Should Be Taken; What Kind of Men Counsellors Should Be; Concerning What Matters It Should Be Taken; and How It Should Be Given.

Everything which a man does at the proper time and season yields more profit than when done at others, and especially is this the case with those undertakings which are carried out in accordance with the advice of learned men. Wherefore a person who desires to obtain assistance by advice should be very careful to obtain it before he performs the act or commences the transaction concerning which he desires to take counsel, and to advise concerning things which can be done, and with regard to which counsellors are qualified to give it either through skill or experience, and counsellors should be men of intelligence and good reputation, and without suspicion or covetousness. For this

reason the judges before whom their decision is to be given should take counsel with men of this kind in the following way; saying in the first place to the parties; "We inform you that we wish to take counsel concerning your case, and therefore if you suspect any learned men of this town, or of this court give us their names in writing;" and, after they have communicated said names, the judge who is to decide the case should select one or two others, who are above suspicion, and order both parties to appear before them, state the whole case as the matters transpired, and make such explanations and arguments before said counsellors as they think will be of most assistance to them. After they have made their allegations and their arguments, and asserted their rights, the counsellors should cause their opinion to be written in secret as they think they ought to act according to justice, always weighing the facts and the arguments which the parties stated and made before them, and give the same to the judge, who is to decide said case; and the judge should base his decision upon the advice given him, if he thinks that it is good, and he should summon the parties and render judgment.

LAW III.

What Compensation Counsellors Should Receive When They Give Good Advice, and What Penalty They Deserve When They Knowingly Give Advice That Is Bad.

Men who are good counsellors should be well rewarded by God and man in this world and in the next, and especially when they give good advice to emperors and kings whose duty it is to preserve law and justice in the country. Counsellors are entitled to receive as a reward for their labor, from the parties to whom they give advice, as much as the judge before whom the suit is brought consider proper, and no more, and this they should receive publicly and not by stealth. If any counsellor gives wrongful advice to a judge he should suffer the same punishment as a judge who knowingly renders a decision contrary to law.

TITLE XXII.

Concerning Judgments and Suits Which Terminate Actions at Law.

We have spoken in preceding Titles of plaintiffs and the matters which they are obliged to consider with reference to their claims; and of defendants, and how they should protect themselves from the complaints made against them in court; and also of the judges whose duty it is to hear and to decide between the parties, and of matters appertaining to them. And for the reason that all this is the correct way to arrive at a decision, and, moreover, because it is proper and right for judges to conclude and terminate what they have to decide; we desire in this Title to speak of judgments by which suits are terminated, in order that every judge may be certain how he should render his decisions, and be able to avoid error. First, we shall show what a judgment is; what advantages spring from it; how many kinds of judgments there are; what they should be, and how they should be rendered; which ones are valid; what force a judgment has after it has been rendered; what compensation those who decide properly should have; and what punishment they should receive when they decide wrongfully.

LAW I.

What a Judgment Is.

The word judgment, in Castilian, means the same as *sententia* in Latin, and definitely speaking, a judgment is an order directed by the court to one of the parties, growing out of an action brought before him. A judgment, however, should be of such a character as not to be either contrary to nature, contrary to the justice of the laws of this our book, or contrary to good customs. A judgment would be contrary to nature, if a judge should decide that one person was the son of another, and the party whom he decided to be the son was older than the other whom he decided to be his father.¹ A judgment would be contrary to justice and law by which a freeman was decided to be a slave; or which stated that a man who is a slave and a Christian could be the slave of a Jew. A judgment would be contrary to good customs by which a judge orders a man not to be loyal to his lord or to kill some other person; or if he should order some woman to commit wickedness with her body with another party, in order to pay what she owed; for in every case of this kind, or in any other similar to it, every judgment which is rendered will not be valid, or be entitled to the name of judgment.

LAW II.

What Advantage Arises from a Judgment, and How Many Kinds of Them There Are.

Great benefit arises from a judgment which is rendered according to justice, for, by means of it, the controversies which men have with one another in court are terminated, and each one obtains his rights. Judgments are divided into three kinds. First, the order given by the judge to a defendant to pay or deliver to the plaintiff the debt or the property which he acknowledged in his presence to be his, and on account of which the suit was brought against

¹ The law of nature takes precedence of all others. "No engagement can oblige, or even authorize, a man to violate the law of nature. All authors who have any regard to conscience or decency agree that no one ought to obey such commands as are evidently contrary to that sacred law." (Vattel, *The Law of Nat.* I.IV.)

This principle is applicable not only to private rules of action, but to international intercourse and jurisprudence as well. "The law of nations is the law of nature, realized in the relations of separate political communities." (Lorimer, *The Institutes of the Law of Nations.* I.I.)—Ed.

him. Second, when a judgment is rendered against the defendant through default of answer, or when the court renders a decision concerning some new matter which arises during the suit which does not relate to the principal claim, as, for instance, where a dispute arises concerning a power of attorney as to whether it is valid or not, or when either of the parties introduces witnesses into court, or produces documents or privileges to prove his case, and the other party gives certain reasons for excluding said witnesses, or to contradict said documents. In either of these cases, or others similar to them, where a judge renders a decision before the principal matter has been determined, a judgment of this kind is called in Latin, *interlocutoria*, which means a statement or order of the judge made with regard to some doubtful question connected with the case. A judge can render this decision in writing, or orally, if he wishes to do so, and he can also annul or correct said judgment for any lawful reason when he so desires, before he renders final judgment concerning the principal matter at issue. The third kind of judgment is that called, in Latin, *definitiva*, which means a final decision which a judge renders with regard to the principal claim, either releasing a defendant or holding him liable.

LAW III.

What a Judgment Should Be.

Every judgment should be positive and just, as the laws of our book direct, and the truth of the matter should be carefully considered, investigated and ascertained, especially in a judgment called *definitiva*, for the reason that a decision of this kind cannot be abrogated or changed by the judge who rendered it after he has once given a good or bad decision, unless he happens to be the king or the chief *adelantado* of his court. The latter have the right to correct their decisions after they have once rendered them, when they desire to show a favor to those who ask this of them; as we shall show hereafter in the laws which treat of this subject. However, where a judge has given a final judgment concerning the principal matter at issue, and did not mention in it the rents and profits of the same; or tax the costs to the party against whom the judgment was rendered; or where he rendered a decision in regard to these matters for more or less than he should have done; every judge has certainly the right to correct his decision in this respect, in the way he thinks he should do according to law. This he must do on the same day on which he rendered the judgment, for afterwards he will not have authority to do so, although he has the right to change the words of his decision subsequently, and insert others that are more proper, not altering the force or meaning of the decision which he rendered.

LAW IV.

For What Reason a Judge Can Change or Revoke a Judgment Which He Himself Has Rendered.

Although we stated in the preceding law that a judge, after he has rendered a final judgment, cannot alter or modify it so far as the principal question at issue is concerned, there are instances in which he can do so. This would be the case where a judge has sentenced anyone to pay into the Court of the King a certain sum, on account of an offence which he has committed, and the party against whom the sentence was passed is so poor that he cannot obtain from his property the penalty which he is required to pay; for in this case the judge who condemned him can revoke the judgment, and release him from the penalty which he ordered him to pay, if he desires to have compassion

on him, and especially can he do this if the offense was not very serious, and the said fine was to be paid into the royal treasury.

Moreover, we decree that when a judge summons any of the parties to appear before him to make their arguments or hear his decision, and one party who was summoned does not promptly appear; and the judge, having heard the argument of the party who is present, decides against the other; and before the judge leaves the place where the judgment was rendered the party who lost his case appears and petitions the judge to revoke his decision, and hear the arguments which he desired to make; in a case of this kind we decree that where the said party when he was summoned said to, and answered him who summoned him that he would not appear before the judge, he should not afterwards be heard, even though he should appear; but he can take an appeal from said decision, if he desires. But where the party, when he was summoned answered that he would appear before the judge, or was silent and said nothing; and shortly after the decision was rendered he appeared before the judge had left the place where he decided the case; that judge has power to revoke his decision and hear the arguments of both parties from the beginning; for it should be understood that a party of this kind who answered that he would come, or was silent when he was summoned, was not disobedient or guilty of contempt toward the judge, but that he could not come sooner, or did not thoroughly understand the words of the summons.

LAW V.

When and How a Judgment Should Be Rendered.

The parties having been summoned, the judge should render his decision by day, and not by night, but if the plaintiff and defendant have not been summoned, even though he may have ascertained the truth in the case, he should not, at that time, render his decision, but when he wishes to do so should summon the parties to appear before him. And, afterwards, if both of them should come, or only one, he can render his decision if he thinks he has ascertained the truth in the case. However, before he has it recorded with the judicial decrees he should read the same publicly, if he knows how to read while seated in the place where he is accustomed to hear cases, or in some other suitable for the purpose.

A judgment should be expressed in good and suitable language which can be readily understood without any ambiguity, and it should be especially stated in it that the defendant is released from, or held liable for, the entire claim, or a certain part of the same, according as the judge understands that it was proved and argued before him; and he should insert other appropriate words which he thinks are applicable to the claim which was set up. If, however, a judge does not know how to read well, he can order some one else to read the decision while he is present; for it will be sufficient, after a decision has been read for him to repeat those words which contain the gist of the same; as, for instance, that he discharges, or holds the party liable against whom the suit was brought. Moreover, we decree that when the king, or any of his *adelantados* desires to render judgment, he can order some one else to read the decision for him, although he may know how to read; for it will be sufficient, on account of the honor of their offices, if they order their decisions to be written down and read in their presence.

LAW VI.**What Judgments Are Valid Although They Are Not Reduced to Writing.**

We stated in the preceding law that every judge should reduce his final decision to writing, but there are cases which can be decided without writing, and only orally. This would be the case when the claim was for a sum less than ten maravedis, or for property not worth more than this amount, especially when a controversy of this kind arises, between men who are poor and degraded. For a judge should hear persons of this kind, and render his decision so that they will not be liable for costs and expenses for anything written. We decree that this rule shall also be observed when officers render accounts of their official acts, or when a bishop hears and decides disputes between his priests.

LAW VII.**What Cases a Judge Should Decide Summarily, Although He May Not Have Ascertained the Absolute Truth Concerning Them.**

Where the truth of a case has been investigated and ascertained, the judge should render his decision, as we stated above. There are suits, however, to which the judge need not give thorough consideration, but only hear and decide summarily. This would be the case when a minor under fourteen years or some other person in his behalf, petitions a judge to deliver to him, as an heir, the property which belonged to his father, and the party who has in possession of said property answers that he is not the son of the man whom he alleges was his father, and, therefore that, the property should not be delivered to him; for the judge should hear a case of this kind summarily, and if he finds for certain reasons, or from certain indications—although they may not be well established, or manifestly prove the fact—that the minor is the son of the person whose property he claims, he should, by his decision, order the said minor to be placed in possession of said property; since a presumption arises that he is the son of the party of whose property he asked to be placed in possession. His opponent is, however, entitled to show and state in opposition to the minor, if he can do so, that he is not the son of the party of whose property he was placed in possession, but a suit of this kind cannot be brought by him until the minor has reached the age of fourteen, if the latter should be unwilling to answer it. The wise men of the ancients established this rule for the benefit of the minor, for where those who have charge of him think that it is more to his advantage to bring suit at once because he has certain witnesses who are old, or it is feared that they may go to foreign countries, it is in their power to institute such proceedings immediately.

Where the minor at that time has enemies; or is exposed to the annoyance of certain persons; or his evidence or defence is not so clear as is necessary; he can then remain silent, and is not required to answer in the suit until he has reached the aforesaid age; being supported in the meantime by the property which was delivered to him, and, afterwards, when he has arrived at said age, he can be the better protected, either through his own efforts or through those of his relatives or friends.

We decree that the same rule shall apply where a woman is pregnant by her deceased husband, and petitions the judge in the name of her unborn child to deliver to her the property which belonged to her said husband, and those in possession of said property say that she was not his lawful wife, or is not pregnant by him. Where she supplies evidence or presumptions that she was his lawful wife, and that she is pregnant by him; although the proofs may be doubtful and not clearly stated, she should, nevertheless, by a judicial decree

be placed in possession of the property she demands in the name of her child, and she will be entitled to live upon and support herself by means of said property. However, the rights of those in possession of said property will be saved, if they subsequently desire to show any lawful reason for which she should not inherit it, as above stated. We decree that the same rule shall be observed when a son asks his father to provide him with the necessities of life, and his father says that he is unwilling to do so because he is not his son; for a case of this kind should be decided summarily by the judge in the way that we mentioned concerning the others.

We also decree that when anyone petitions a judge to place him in possession of property of his opponent, in default of answer, the judge should simply ascertain, before he orders this to be done, what rights the party has to allege against the said opponent based upon some document which he may produce, and by means of an oath which he requires him to take that he does not make this claim maliciously; and after this he may place him in possession of said property in the way we mentioned in the laws treating of this subject. We decree that the same rule shall be observed when anyone applies to a judge to order a defendant to produce before him the personal property for which he brings suit, and the defendant says, that there is no reason why he should produce it, because the plaintiff has no rights in it. The judge should decide a dispute of this kind summarily, by taking the oath of the plaintiff who, in this way, claims said property, that it may appear why he thinks he has some right in it, and he should order by a decision that said property be produced, as we have previously shown in the laws which treat of this subject.

Moreover, we decree that when a judge orders some of the property of a defendant to be delivered to a plaintiff on account of a debt, and it happens that some other party says that the said property which he orders to be delivered does not belong to the defendant; he who made the delivery must ascertain the plain truth, and if he thinks that the said property does not belong to said defendant, he should relinquish it and take some other. We also decree that where any person leaves a bequest that some of his property be given to another party—as, for instance, a vineyard or a tract of land, or anything else—and imposes some condition upon it, or appoints some particular day upon which it should be given; and before the condition is complied with, or the appointed day arrives, he who has possession of the property bequeathed is asked to give a surety for the delivery of the same to said party until the day arrives or the condition has been complied with, as directed by the testator; and he says that he cannot do so because the demand is made maliciously; the judge should decide a dispute of this kind summarily and without delay, in the same manner as we explained concerning the others.

LAW VIII.

A Judge Should, by His Decision, Tax the Costs Made by His Adversary to the Party Who Loses the Case.

Those who institute suits against their adversaries, actuated by malice and knowing that they have no right to the property which they claim, causing said parties to be brought into court and subjecting them to great costs and expenses, should not go unpunished, when the other parties are afraid to act. Moreover, we decree that when persons institute suits in this way or defend themselves against others, having no lawful reason for doing so, the judge should not only declare that the party who brought the suit has lost his case, but he should also condemn him to pay the costs incurred by the other party by reason of the suit.

When, however, the judge thinks that the defeated party was actuated by any just motive in bringing the suit or in making a defense, he has no reason to order him to pay the costs; and this would be the case when anyone who is the heir of another sets up a claim or defends one in court, on account of some property which he inherited; or where another party brings suit, or sets up a defense, on account of something which was given him, or which he had purchased or exchanged in good faith, believing that the party who gave it to him had authority to dispose of it; or if in any other suit whatsoever, the oath of the *mancuadra*, which is called in Latin *juramentum de calumnia* has already been taken; in any of these cases the judge should not order the defeated party to pay the costs incurred by the one who is successful, for all persons presume that parties who bring, or defend suits of this description, act in good faith thinking they have the right to do so, and especially when the above mentioned oath is taken at the beginning of the suit, for then one should not suspect that the party who took the oath forgets the safety of his soul.

LAW IX.

When and How a Judge May Render His Decision, Although the Plaintiff May Not Be Present.

It happens sometimes that plaintiffs, after a suit has been begun by complaint and answer, do not desire to prosecute it any further, and abandon it through negligence, or knowingly and maliciously, thinking that they have not the means to prove their case; and in an instance of this kind we decree that if the defendant applies to the judge, and asks him to proceed with the suit, he should then summon the plaintiff to appear before him, prosecute his case, and hear the decision. If the plaintiff does not appear at the appointed time, the judge should consider the matters which have transpired during the progress of the suit, and if he finds that the plaintiff was allowed certain periods in which to prove his case, and that he did not do so; or that he introduced certain evidence by which he did not clearly establish what he should, then the judge should release the defendant from the principal claim against him. But if the judge should find among the transactions that the plaintiff had not been afforded proper time in which to prove his case, or should ascertain that any doubt existed, on account of which he would not venture to render a decision, he can then release the defendant from being required to answer the plaintiff, by reason of said transactions which took place during the progress of the suit; but he should not release him from liability for the property for which he was sued. The plaintiff should also be condemned to pay the costs and expenses incurred by the defendant on account of the case, because the former was unwilling to prosecute it.

If, however, the plaintiff should subsequently appear before the judge, and desire to bring suit a second time for the property which he claimed in the first place, he can do so, by first paying the costs to the defendant, in the way in which they were adjudged, but the plaintiff cannot take advantage of anything contained in the decrees of the first suit, because the defendant was released from them by the decision; but if the judge finds in any of the records of said suit that the plaintiff who was not present, proved his case well and clearly, and the defendant insists that judgment be rendered, we decree that the judge can do so, if he desires, and by his decision find against the defendant in whatever has been proved against him, although the plaintiff was disobedient and did not appear in court at the appointed time. And for the reason that the defendant was obedient to the judge in defending the suit, and the plaintiff disobedient, we consider it proper, and

we order, that the judge deduct and reserve as much of the principal claim, decided against said defendant, as the costs amount to, up to the day when judgment was rendered against him; and this having been reserved, he should establish by his decision that the defendant has lost his case so far as the remaining amount was concerned.

LAW X.

When a Judge Can Render His Decision Although the Defendant May Not Be Present.

We explained in the preceding law in what way a judge could decide a case which has been begun before him by complaint and answer, although the plaintiff might not be present; and now we shall state how, he can do this, when the defendant is a fugitive, and is unwilling to appear before him either in person, or by attorney, after the suit has been begun as we have stated above; and we decree that if the plaintiff applies to the judge, and petitions him to proceed against the defendant, and decide the case, since the said defendant and no other person for him is willing to appear; the judge shall then cause the defendant to be summoned, and appoint a certain day for him to appear, conduct his case, and hear the decision, and if he does not come, he should review the matters which have transpired during the progress of the suit, and if he finds in them that the plaintiff has clearly proved his case he should render a decision against the defendant, and adjudge him to pay the claim, although he may not be present.

If the judge is of the opinion that the plaintiff has not clearly proved his claim, and the latter asks the judge to render his decision, but should be unwilling to introduce other evidence, he must find for the defendant and adjudge him to pay the costs, because he was disobedient in not appearing before him. Where, however, the plaintiff petitions the judge not to render final judgment in a case of this kind, but asks that, since the defendant is disobedient and unwilling to appear before him, he place him in possession of the property of said defendant, or of whatever he claims, in default of answer, then the judge should do this, in the way stated in the laws of this our book, in the Title concerning Granting Possession of Property.

LAW XI.

What Judges Should Do, When They Are in Doubt as to How They Should Render Their Decisions.

Those are very near to ascertaining the truth who entertain any doubt with regard to it, as the wise men of the ancients declared. Wherefore, we decree that whenever judges are in doubt as to how they ought to decide, on account of the conflicting evidence and rights shown by both parties, they should then ask learned men who are without suspicion and the residents of the places where they have to render judgment, and explain to them all the facts as they took place before them. And if by answer of these learned men, they can find means to resolve the doubt in which they are, they should render judgment in the manner as stated above; but where they cannot resolve said doubt, they should cause the entire suit, as it passed before them, to be reduced to writing, well and faithfully, and afterwards have it read to the parties; in order that they may see and understand whether all that was stated has been written down. If they should find that anything has been added, omitted, or changed they should correct it, and afterwards seal the document with their seals, and give each one of the parties a copy to take to

the king; and, in addition to all this, the judges should draw up their report and send it to the king, stating all the facts, and the doubt under which they labor; and then the king, the truth having been ascertained, can render his decision, or send word to the judges how to decide, if he so desires. No judge should do this in order to avoid work, or to protract the suit, or through fear, or on account of any like or dislike which he may entertain toward either of the parties, but only where he cannot decide according to justice as he should, and desires to do; and where he acts otherwise he should be punished for it as the king thinks he deserves.

LAW XII.

What Judgments Are Not Valid.

Sometimes judges err in rendering decisions, just as physicians do in administering medicines, for sometimes they give sick persons less or more than they should, or intend to give one thing and give another which is not indicated by the disease. And judges, also, at times act in like manner in their decisions, rendering judgments which are insufficient, or wrongful, or deciding in some other way inapplicable to the case; and, in order that they may avoid this, we desire to state for what reasons a judgment is not valid on account of the person of the judge, or for the reason that he renders it in a way he should not do; and so far as it concerns him personally, this applies where he who gives the decision is a man of such a character as is forbidden by the laws of this our book to render judgment, as we explained in the Title concerning Judges. We decree that the same rule shall be observed when anyone decides a case and authority to do so has not been conferred upon him; and, also, when judgment is rendered in an improper manner, where the judge decides while standing and not quietly seated; or where he renders it and does not cause it to be reduced to writing, as we formerly stated in the laws which treat of this subject; or where the judgment is contrary to nature, or contrary to the justice of the laws of this book, or contrary to good customs, as we previously declared; or where a judgment was rendered against another party, and he was not summoned in the first place to be present and hear it; or where it was rendered at a time which is prohibited, as stated in the Title of this our book which treats of Festivals, or where a judgment was given in an improper place, as, for instance, in a tavern, or in some other place unsuitable for the purpose; or where a judge rendered it while outside his jurisdiction, where he had no authority to do so; or where a judgment is rendered relative to some spiritual matter, which should have been determined by the Holy Church. Where a judgment is rendered under any of these circumstances it will not be valid.

We decree that the same rule shall apply where a judgment is rendered against a minor under twenty-five years of age, or against an insane person or one who has lost his memory and his guardian is not present to defend him; for a judgment of this kind will not be valid except where it is given in favor of such persons. We also decree that where a judgment is rendered against a slave belonging to another party, and his master is not present to protect him, it shall not be valid, except where it was given to determine the right of possession of property which the said slave held in the name of his master, and of which he had been deprived or dispossessed; or where it was rendered in some other matter in which a slave could himself bring suit, or make a defence in court without the permission of his master, as stated in the laws of this our book which treat of this subject; for, in such instances, a judgment of this kind will be valid, and cannot be set aside for the reason that it was alleged to have been rendered when the master was not present.

LAW XIII.**When a Second Judgment, Which Is Contradictory to the First, Is Not Valid.**

When a judgment is rendered against anyone, and neither of the parties take an appeal; and afterwards the same parties bring an action the second time for the same property, and in the same way, and another judgment contrary to the first is rendered; we decree that the second shall not be valid. Where, however, there is a dispute concerning the first judgment, one of the parties alleging that the judge should not decide the case because it had already been decided once; and the other party denies this; and the judge before whom this dispute arose states, in rendering his decision, that no judgment had been given concerning said property; the second judgment subsequently rendered contrary to the first shall be valid; although neither of the parties may have taken an appeal from the first one. This is understood to be the rule when the parties do not appeal from the second judgment, and it is not reversed by the appellate judge. There are, moreover, instances in which a second judgment is valid although it contradicts the first, and this is the case in marriages. For where a judgment has been rendered, and it can afterwards be proved that some error was committed with regard to the facts, another judgment, contrary to the first one, can be given.

Moreover, every judgment based upon the evidences of false witnesses, or upon forged documents, or upon any other kind of deception whatsoever, or which has been rendered in consideration of money, or of any gift by which a judge has been corrupted; although the party against whom it was given did not appeal from it, he can have it set aside at any time within twenty years, by proving that the first one was based upon evidence of this kind, or upon false statements; but if he proves this in any other way the first judgment shall stand; for forged documents or false witnesses might easily be produced before a judge, and other good and genuine ones in opposition to them, and he might base his decisions on the good ones and not on those that were bad. Wherefore, in a case of this kind, if the party does not specifically establish that the judge was induced to render his decision by reason of said false testimony, the judgment which he desires to prove to be wrongful shall remain valid.

We also decree that where a judge orders one of the parties to be sworn on account of some matter which was not as clearly proved as he desires it to be, and he decides against the other party by reason of said oath; and the defeated party afterwards proves by newly discovered documentary evidence that the other swore to what was false, and that he himself told the truth; in an instance of this kind a second judgment, contradictory to the prior one, will be valid, and that which was rendered in the first place on account of a false oath, shall not be observed.

LAW XIV.**A Judgment Rendered Under Certain Conditions, or On Account of Great Deeds, Is Not Valid.**

Judges should not render their decisions conditionally, and if they do so, and the parties against whom they are rendered, appeal, the appellate court can reverse the judgments. But where neither of the parties appeal from such a judgment it cannot afterwards be set aside for this reason, that is, by stating that it was rendered conditionally. We also decree that no judgment shall be rendered on account of the exploits of another person, except where the heroic act is taken from a decision which the king has given; for then a judgment can be rendered on account of it, because a decision of the king has the same force and should be as valid as a law in the case in which it is rendered, and in others similar to it.

LAW XV.**A Judgment Will Not Be Valid When Rendered Against a Party Who Is Not in the Jurisdiction of a Judge.**

Judges sometimes oppress defendants who answer before them, although they belong to another jurisdiction over which said judges have no judicial authority; and in a case of this kind we decree that every judgment rendered in this way shall not be valid. The same rule applies when the parties make a mistake by accepting some judge who has no authority over them, they thinking that he has, for a judgment rendered in this way will not be valid. Moreover, we decree that a judgment rendered against anyone, after his death, will not be valid; because he has already passed under the authority of another Judge Who will pronounce judgment on all other persons; except in treason, and in all special cases of which we treat in the book concerning Crimes, and other offences for which a man who is dead can be sentenced, and which affect either his reputation or his property. We also decree that a judgment rendered concerning any matter before a complaint or answer has been filed concerning it shall not be valid, as we have previously shown in the laws treating of this subject; and we decree that the same rule shall apply to the decision given by a judge who does not know the truth of a case, and where he afterwards desires to ascertain it, or make inquiries, it shall not be valid; for a judge should systematically examine a case and investigate it, and ascertain the truth the best that he can, as the laws of this book direct, and finally render his judgment as he thinks he should. Moreover, a judgment will not be valid in which it is not stated that the defendant is either released or liable, for words of this kind, or others like them, should be inserted in every final decree in a way which corresponds to the nature of the claim, as we have previously explained.

LAW XVI.**A Decision Rendered by a Judge Concerning Property for Which Suit Was Not Brought Before Him Will Not Be Valid.**

A Judge should carefully consider the nature of the property in dispute between the parties who appear before him in court, and also in what way the suit is brought, and, above all, what proof, or evidence, is introduced concerning it; and, then he should render his decision with respect to said property. For where a suit is brought before him relating to a field or a vineyard, and he renders a decision concerning houses or animals, or any other property which has no connection with the case, a judgment of this kind will not be valid.

We decree that the same rule shall apply where a suit is brought only relating to the ownership of a house, and he gives judgment concerning its possession. Moreover, we decree that if a plaintiff sues another party for a horse or a slave, which was left to him or promised him, not mentioning it by name, or designating positively which it is; and the judge subsequently renders a decision against the defendant, finding that he gave to the plaintiff, So-and-So, a certain slave, designating him by his name, or gave So-and-So, a horse, describing it by its color or its form; a judgment of this kind will not be valid for the reason that as the suit was brought in a general way before him the decision should be expressed in similar terms.

We also decree that when a suit is brought before a judge, with reference to any animal or slave that has caused damage to a field, or a vineyard, or any property belonging to another party, and the plaintiff asks the owner of the animal or the slave to pay the damage or give him the animal or slave that caused it, and proves this; the judge should render his decision in the way in which the complaint was worded, speaking as follows: "I order that the defendant pay so much, by

way of reparation for the damage that his animal or his slave caused to the property of So-and-So; or that he give or surrender to the plaintiff the said property which caused the damage." Where he renders a decision in any other way, finding against the defendant particularly, in any of the matters aforesaid, it will not be valid; and we decree that this shall apply not only to all the above-mentioned instances, but also to all others similar to them.

Moreover, we decree that when judges do not specifically mention in their decisions the property, or the amount for which they hold liable the defendant or release him, but speak as follows; "I order the defendant to pay or to deliver to So-and-So what he brought suit for before me; or I order him to pay the claim made against him; or I release him from it; or I deem it just that he shall not give him what he demands"; or where he inserts in his decision other words similar to these by means of which it can be clearly understood that the defendant is released from liability, or has lost his case because the claim has been allowed; in an instance of this kind where the property or the amount in dispute is found to be on record, then a judgment rendered in any of the above-mentioned ways will be valid; but where no definite claim is made in the transactions which take place before the judge a decision in which the property, or the amount for which it is given is not specially stated, will not be valid.

LAW XVII.

What Judgments Shall Be Valid When the Judges Are Two or More in Number and Disagree, Deciding in Different Ways.

It is natural for discord to frequently arise where several men are assembled together, and especially when they are required to decide concerning any matter, and, for this reason, we decree that if two or more judges are appointed to hear any particular case, or to hear all cases; or are judges of arbitration; and, all being present, decide in different ways, the decision of the majority of said judges shall be valid, and not that of the minority. But where the judges all agree in their decision against the defendant, and there is disagreement among them as to the amount, so that some fix a larger sum, and others a smaller one; then we decree that if those on one side are equal in number to those on the other, the judgment fixing the smaller sum shall prevail, and not the other. There are two reasons for this: first, because all persons agree upon what is of least value; second, because judges should always be merciful and temperate, and more willing to release or lighten the burden of a defendant than to condemn him, or oppress him. Where, however, judges are appointed to decide particular cases, and their numbers are equal on both sides and they disagree in every respect, and render decisions of different kinds, some finding against the defendant and others for him; in such an instance, we decree that none of these judgments shall be valid until he who ordered the case to be heard reviews it, and confirms the decision which he considers proper.

And, above all, we decree that when an order is given to judges to decide and determine cases together, all shall be present at the time when judgment is to be rendered, and if anyone of them should not happen to be present when this is done, the decision given by the others shall not be valid, unless whoever appointed the judge sends his letter or his order stating that he is willing that judgment should be rendered without the presence of the aforesaid judge. The wise men of the ancients considered this proper for the following reason, namely; because if said judge had been present at the time when the others rendered their decision he might have given an opinion that would have caused them to decide in a different way. Where he who gives them power to decide grants permission for some of them to do so without the others, the decision which they render shall be valid, according to the terms by which they were given authority.

LAW XVIII.

**Which Judgment Will Be Valid, When Judges Disagree in Deciding a Case
Involving Liberty or Slavery, or One Involving Punishment,
Called in Latin a Criminal Case.**

Liberty is something with which all persons are naturally pleased, and, as was stated by wise men, all laws ought to favor it when they can do so in any way, or for any reason. Wherefore, we decree that when two or more judges consent to hear a suit involving liberty or slavery, and, at the time when they are about to render judgment concerning it they disagree, having opinions of different kinds, some of them holding the person alleged to be a slave to be free, and others deciding against him; and the judges are equal in number on both sides, the decision favoring liberty shall prevail, and not that against it. We decree that the same rule shall be observed in every criminal case where a party has been condemned to death, or to loss of limb, or to banishment from the country; or where any other penalty can be inflicted by which he may be rendered infamous, and that the decision given by the judges in favor of the defendant, absolutely discharging him, or mitigating his punishment, shall prevail, and not that of those who condemned or oppressed him, although the judges may be equal in numbers on both sides. This is the rule because judges should always incline to mercy to defendants, when they can do so with justice, and especially in cases of this kind. Where, however, those who condemn the defendant are greater in number than those who acquit him, the decision of the majority should prevail, as we have previously stated.

LAW XIX.

What Force a Judgment Has.

A final judgment rendered by a judge in a just manner between the parties, and from which neither of them appeals within the time stated in the Title concerning Appeals, has wonderfully great force, because, from this time forward, the contending parties and their heirs are bound to abide by it. We decree that the same rule shall apply where either of the parties takes an appeal, and the judgment is afterwards confirmed by the decision of the superior authority which has power to do so. If, however, anything should happen afterwards to cause the judgment to lose its force, the parties are not required to conform to it. This would be the case where one person loaned another an animal or any other property, or gave to an artisan something on which to expend labor or make repairs, and it is lost through his fault, for which reason the judge has to decide whether he should pay for it. Wherefore, if said property should afterwards come into the possession of the former owner, the other party can demand that he return what he received from him for it; and in this way a judgment loses its force although no appeal has been taken from the same.

We also decree that where a party has not paid for the lost property what he was required to do by order of court, he can avoid doing so, since the property for which he was declared liable has passed into the possession of its owner. Moreover, we decree that a final judgment has such great force that it cannot be set aside on account of an error in accounting, if either of the contending parties was responsible for said error in any way whatsoever, since he did not take an appeal because of it. But where the error happens to be in the decision of the judge, as, for instance, if he should say; "I order the defendant to pay the plaintiff a hundred maravedis, which he owes him for a certain reason, and also fifty maravedis which he owes him for some other reason, which amount altogether to two hundred maravedis;" a judgment of this kind will not be valid for more than a hundred and fifty maravedis, or for the excess caused by an error in accounting; and we decree

that this rule shall apply to all other errors resembling these which may be found in judgments.

Moreover, we decree that a judgment cannot be set aside after it has been rendered if no appeal is taken from it; even though documents or privileges, which have been newly discovered, may be produced which are of such a character that, if the judge had seen them before he rendered his judgment, he might have decided in another way, except where the judgment was rendered against the king or his attorneys, or in cases involving his treasury or his sovereignty. For then, if evidence of this kind has been found, they can be used to set aside the judgment rendered against him, within three years from the day on which said judgment was rendered, or afterwards at any time, if it can be proved that the attorney of the king was guilty of fraud in his suit, by extending aid to the other party so that judgment had to be rendered against him; or where any other manifest fraud can be established by means of which a judgment of this kind was obtained. We decree that the same rule shall be observed with regard to other judgments, based upon an oath made by one of the parties; for, after documents or privileges have been newly discovered, a judgment can be set aside, as we have previously shown in the Title concerning Oaths.

And, above all, we decree that a judgment has such great force that the heir of a person in whose favor it was rendered can profit by it, just as the party himself could have done, and also all other persons to whom the ownership of said property with regard to which the judgment was rendered may lawfully pass; and in the same way it may cause injury to the heir of the party against whom it was given, just as it would have done to himself.

We also decree that a judgment does not lose its force although the judge who rendered it may die, but that other judges are bound to cause it to be observed and complied with. We decree that this same rule shall apply to all other matters which a judge decided according to law before his death, and also, that from a judgment which has been rendered, the party in whose favor it was given acquires a right to claim property within thirty years from the parties against whom said judgment was rendered, and their heirs, or any other person in whose possession it may be found; unless the party who holds it is able to show that he has a better right to said property than the party who claims it. Moreover, we decree that when a defendant is released in court from liability for property for which he was sued, he and his heirs can always defend themselves, by reason of said judgment against the party claiming it and his heirs, and also against all others claiming it for them or in their names.

LAW XX.

A Judgment Rendered Between Certain Parties Cannot Be an Embarrassment to Others, Except in Special Cases.

It is proper and just that a judgment rendered against one party should not be a source of embarrassment to another. For which reason we decree that where anyone is the owner of a field, a vineyard, or other property, or has some other right in it, and believes or knows that another has brought suit in court against a third party who had possession of said property, and judgment was given in favor of the party who brought the suit, the owner of the property can afterwards claim it from anyone in whose possession he finds it, and the judgment shall be no hindrance to him, since the party who held and defended it did not do so by his order.

We also decree that if one of the heirs of a debtor is sued in court, and the party who brings the suit proves his case on account of the debt owed by the deceased, so that judgment is rendered against him; a judgment of this kind shall be no impediment to the other heirs, although it was rendered with their knowledge,

and without their opposition. We decree that the same rule shall be observed when any one of the heirs of the party who was entitled to the debt brings suit for it, with the knowledge of the others and without their opposition; for, although he may lose his case, this will be no hindrance to the others, so far as the amount of the share of the debt due to them out of the property of the deceased is concerned. Although judgment may be rendered against one it should not be an impediment to another, as we have above stated; but there are instances in which it will be so, and this would occur when two men become the debtors of a third with regard to the same piece of property, each one being liable for it all; or where a field, or a vineyard, or any other property whatsoever is promised to certain persons in such a way that each one of them can absolutely claim it; for a judgment rendered against any of the above-mentioned parties, relating to said property, will be a bar to the others, although they were not present at the time when it was rendered.

Moreover, we decree that if any person holds property pledged by another, and believes and knows that the party who pledged the same has gone into court on account of its ownership, and does not manifest opposition; then, in case the party who pledged it is defeated the judgment rendered against him will result in the loss of the party who holds the property in pledge, so that he will be required to deliver it to the party who gained the suit, although he may not desire to do so. We decree that the same law shall apply where the party who pledged it is defeated before this was done, but if, after the property was pledged, the party who pledged it institutes legal proceedings—the person who holds it in pledge not being aware of this—the judgment rendered against the party who pledged it shall cause no embarrassment to the other.

We also decree that if any man knows, or learns that his father-in-law, his mother-in-law, or his wife, has gone into court with another party, to defend the title to any of the property given him in marriage along with his wife, and he does not oppose this; a judgment rendered with regard to said property against any of the persons aforesaid will be a bar to the husband; for the reason that it appears that the matter was determined with his consent, since he was aware that they went into court concerning said property and manifested no opposition. This would also be the case where a purchaser who had bought property sees or knows that the vendor entered into a contract with another party with reference to it, and he did not oppose it; for where a decision is rendered against the vendor it injures the party who purchases the property of him, although the vendor may be subsequently required to make reparation for the same. Moreover, we decree that when an action is brought against one who is the slave, or is attached to the household of the party who brings suit, and another party to whom he belongs and who is aware of this does not oppose it, or make a defense, but remains silent, and permits the case to proceed, and the other party declares that he is free; every judgment rendered in a case of this kind which states that the party was a slave of the person who claimed him, or that he was free, will be a bar to the other to whom he belonged, so that he cannot afterwards demand him as his slave. We decree that the same rule shall apply to a vassal and to a person who is emancipated, where judgment is rendered against either of them in any way.

We also decree that if anyone alleges that he is the son of another, and his father is unwilling to recognize him as his son, and judgment is rendered against the father, under these circumstances, the judge stating in his decision that he is the son of the party who is unwilling to recognize him as such; a judgment of this kind will be a bar to the father and to all his relatives so far as the property they can inherit through relationship is concerned, although none of them except the father was present when the judgment was rendered. We decree that the same rule shall apply where a son refuses to recognize his father, denying that he is the son, for a judgment rendered against him in such a case will not only be a bar to him, but to all other relatives who may wish to oppose it. We also decree, that when anyone

disinherits his sons and leaves his property to other heirs, and judgment is rendered against those who defended the will, it will not only be a bar to those who are made heirs, but also to all others to whom anything was bequeathed by said will. This takes place when a father gives no just reason in his will for disinheriting his children, as we shall show hereafter in the laws of this our book which treat of this subject.

We also decree that where any person is accused of an offense, which he has committed and has been acquitted in court, and another party desires afterwards to accuse him of the same offense, he cannot do so, because a decision of this kind is not only a bar to those who accused him in the first place, but also to all others who may desire subsequently to do so on account of the aforesaid act; except, however, where those who wish to accuse him a second time allege and state that the first accuser was guilty of fraud in the conduct of the case, for introducing irrelevant testimony, and showing that he was not familiar with the facts by means of which the defendant was acquitted, so that no one else could subsequently accuse him of this offense, for if this can be proved the party can a second time be accused of the offense of which he had been acquitted.¹

We also decree that this should be observed in all other cases in which every individual of the people can institute legal proceedings, as, for instance, when anyone erects new structures on the commons belonging to a council; or on a highway which is in use; or in a river; or in any other place similar to these; and where anyone of the people institutes proceedings against the party who built said structure, and the latter is acquitted, no one can afterwards sue him in a case of this kind, except where he has committed fraud, as we previously stated, for then he can be sued again if the party desires to do so.

LAW XXI.

When a Judgment Rendered Between Certain Parties Can Be of Advantage to Others.

Where a controversy arises between certain persons with regard to a house, a vineyard, or any other kind of property, and judgment is rendered concerning it, it is of advantage not only to the party who gains the suit but also to his heirs, or to those to whom the ownership of the property with respect to which the judgment was rendered passes, as, for instance, by a bequest, by purchase, by gift, by exchange, or by any other lawful means. We also decree that not only is a judgment of this kind a bar to the party against whom it was rendered, but also to his heirs, and to all others who may claim it in his name.

We also decree that where any persons are partners, or shareholders, or associates interested in any real property, or in anything else which they hold in common; and any one of them institutes legal proceedings against another person who is a neighbor of theirs, stating that the field, or the house, or the land of his said neighbor owed some service to the lands of the plaintiff and his associates, and judgment is rendered in his favor against the defendant, it will be not only an advantage to him but also to all his associates. If a judgment is rendered against

¹We see here the germ of the principle embodied in the Fifth Amendment to the Constitution of the United States, that no person shall be twice put in jeopardy of life or limb for the same offense. This doctrine was subsequently, to a certain extent, admitted by the common law: "*Nemo debet bis vexari, si constat curiæ quod sit, pro una et eadem causa.*" (Coke Inst. V-61). It also coincides with the general policy of English jurisprudence as applied to both civil and criminal cases, namely, that all unnecessary legal proceedings should be discouraged, as is disclosed by the ancient maxims: "*Interest reipublice ut sit finis litium;*" and "*Nemo bis punitur pro eadem delicto.*" The civil law, however, recognizes no such humanitarian procedure, which founded upon the mercy with which justice is presumed to be tempered, prohibits the unrelenting pursuit of a culprit who has previously been convicted or discharged by a competent tribunal. The Spanish courts, relying on the authority of the *Partidas*, explicitly sanction the application of this principle in practice. "*Lo que ha sido objeto de un juicio y de una sentencia definitiva, salvo el caso de revision, no puede ya reproducirse; non his in idem, decia el antiguo aforismo procesal, y por consiguiente no puede tampoco ejercitarse nuevamente la misma accion.*" (*Ley de Enjuiciamiento Criminal Reformada*. Art. 115.)—Ed.

him it will be no bar to his other partners, since they themselves, did not appear in said suit in person, nor did anyone else appear by their direction; for they have the choice of assenting to the judgment rendered in the case which their associates brought without their order, or of opposing it. Moreover, we decree that where, in any suit in which several persons are interested, judgment is rendered against all of them, and of said judgment only one took an appeal; or if all appealed only one prosecuted the appeal so that a decision was rendered in his favor, and the first one was revoked; all those who were interested in the suit shall be benefited by a decision of this kind, just as much as he is who prosecuted the appeal.

We also decree that where any person has been acquitted of an accusation of adultery which was made against him, the woman with whom he is said to have committed the offense can take advantage of said judgment, so that if afterwards an attempt should be made to accuse her of said adultery she shall not be required to answer, and can set up as a defense the judgment rendered in favor of the man. If, however, the accused party admits in court that he had committed adultery with her, or this should be proved by witnesses so that it was necessary to decide against him, neither a judgment, nor evidence of this kind should be a bar to the prosecution of the woman; for if anyone should desire to accuse her of adultery a second time, he can do so, prosecuting the case against her until judgment is rendered concerning the accusation.

LAW XXII.

What Orders of Judges Have Not the Force of Judgments.

Not every utterance or order which a judge makes in the course of a suit has the force of a judgment. For which reason we decree that where a party complains to a judge of anyone stating that he owes him something, and the judge gives him a letter to the party of whom he complains, directing the former to give, pay, or deliver whatever the said party claims, not having summoned him in the first place, or ascertained the truth, as we have previously shown; an order of this kind will not be valid, and has not the force of a judgment. Moreover, we declare that when a judge has rendered his final decree, and afterwards makes another order by which what he himself decided is set aside or changed, an order of this kind has not the force of a judgment, nor is the first one abrogated by it. Moreover, we decree, that when a judge by a decision orders either of the parties to pay or deliver the amount or the property for which the other party brought suit, before a certain day, and stating that if he does not do this before that day, he shall afterwards be required to pay double the amount; a statement of this kind included in the decision, so far as it relates to the said double amount has not the force of a judgment but is a threat of the judge, and does not affect the party against whom the statement was made, so far as the said double amount is concerned, or any sum which he was ordered to pay in excess of that for which suit was brought; except where a threat of this kind was made in the decision of a suit brought by a minor against the party who had charge of him and his property; for if he was unwilling to pay at the time appointed by the judge, then a threat of this kind against him will have the force of a judgment, and he will be subsequently required to pay the minor the penalty and double the amount, and everything else which the judge ordered him to pay and deliver.

LAW XXIII.**What Compensation Judges Should Have When They Perform Their Duties Well.**

Judges deserve to receive liberal compensation when they perform their duties well and faithfully, and this is of two kinds. First, they obtain by this course great eminence and a good reputation, and kings and all the people love and honor them. Second, they are paid a good salary and are benefited in many other ways by persons trusting in them, and by their being appointed in their districts to dispense justice to the people; and, moreover, they expect to receive a suitable reward from God, both in this world and in the next, on account of the good which they accomplish. For this reason judges should endeavor to be good and loyal, and without covetousness, as stated in the laws which treat of judges in this respect.

LAW XXIV.**What Punishment a Judge Should Suffer Who Knowingly, or Through Ignorance, Renders An Improper Decision in a Suit Which Is Not a Criminal Case.**

A judge commits a grievous error who knowingly decides contrary to justice, and so does a party who gives or promises him anything on account of his decision. For this reason we desire to state what punishment each of them should receive. First, we shall speak of the judge, for if he knowingly gives a wrongful decision through dislike of the party against whom he decides, or through affection which he entertains towards the other party, his adversary, and not in consideration of anything given or promised him; and the judgment was rendered with respect to some movable or immovable, or concerning any other property whatsoever which has no connection with a criminal case or with one involving punishment; we deem it proper, and we order that he pay out of his own property, to the party against whom he rendered such a judgment, as much as he caused him to lose, and, in addition, all damages, losses, and expenses which the party may swear he incurred by reason of said judgment; and he shall remain forever infamous because he violated the oath which he took when he was appointed to office; and, above all, he shall be deprived of the authority of judge, because he made a bad and wrongful use of his position.

But where he decides wrongfully through ignorance, or through not understanding the law, and the judgment is rendered in any of the suits above mentioned, he is liable to no other penalty except that he shall with the approval of the Court of the King, make good to the party against whom he rendered the decision all damage or loss, which the latter suffered by reason of it. And, above all he should protect himself by swearing that he did not render said judgment maliciously, but through mistake, and through want of understanding, not knowing how to distinguish what was right. Where, however, a judge gives a wrongful decision in consideration of anything which was given or promised him, in addition to the penalty aforesaid, to which as we stated above he is liable who knowingly gives a bad decision, he is bound to pay the king three times the amount of what he received and of what was promised him. And if he did not receive it, he shall pay double the amount to the king, and, above all, the judgment sold in this way for a price shall not be valid, even though the party who was defeated does not appeal from it.

LAW XXV.

What Punishment a Judge Should Receive Who Knowingly Gives a Wrongful Decision in a Criminal Case.

When a judge has to pass sentence of death or loss of limb upon anyone, before he renders his decision, he should very diligently reflect upon everything which should be considered in the matter, in order that he may decide without error; for this is something which, after it has been done, cannot be repaired or corrected perfectly in any way.¹ Wherefore we decree that if any judge knowingly gives a wrongful decision against another party in a criminal case, he deserves to receive the same corporal punishment which he ordered to be inflicted upon said party, whether it be that of death, loss of limb, or any other kind of punishment; and where the king desires to show him grace by granting him his life, he can banish him forever from the country as an infamous person, and confiscate all his property. This same penalty should be inflicted upon chief *adelantados*, or any other noblemen upon whom the king confers authority to preside in court if they wrongfully sentence a nobleman, or a distinguished knight of noble birth directly on the side of his father or his mother. But where an *adelantado*, or nobleman wrongfully sentences another man inferior in rank to those we mentioned above, he should be banished from the country. If he renders a judgment of this kind for a reward, he should be banished forever and all his property confiscated by the royal treasury, where he has no relatives in the direct ascending or descending line as far as the fourth degree; and if he has relatives of this kind his property should not be confiscated, but they will be bound to pay the heirs of the party sentenced four times as much as he took, and three times as much to the royal treasury, if they wish to retain the property; and he shall pay to the royal treasury, double what he was promised as a consideration for said judgment, if he has not already received it, and an equal amount to the heirs of the party who was wrongfully sentenced.²

LAW XXVI.

What Penalty He Should Suffer, Who Gives Anything to a Judge to Induce Him to Render a Wrongful Decision.

Parties to suits who corrupt judges that are to hear their cases by giving and promising them something to induce them to decide wrongfully, should not go unpunished. For this reason we decree that if an accuser gives anything to a judge, who is to determine a case, in order that he may wrongfully decide against the accused party, he shall lose his claim, and the accused shall be discharged; and, above

¹ Trial by jury was unknown to the civil law, and while it has been adopted in a modified form by some of the nations whose judicial procedure is based upon that system, it has, on the whole, undergone such changes as to deprive it of the features best calculated to guard the rights of the citizens, as enjoined by the laws and practice of Anglo-Saxon jurisprudence.

The Spanish law which prescribes the qualifications and duties of a juror is very strict. He must be more than thirty years of age, a citizen; know how to read and write; be the head of a family, and a resident of the neighborhood for at least four years. A person is disqualified who has been prosecuted for a crime; is mentally or physically incompetent; is a bankrupt; has been sued for the retention of public funds, or been the recipient of public charity within a year. As in our practice, the first juror is made "president," or foreman. The questions to be determined are submitted in writing. The verdict is established by a majority and need not be unanimous. The jury, as in the Anglo-Saxon system, from which it is borrowed, consists of twelve members, and is only impelled in criminal cases.

Jurors in England were originally designated *testes*, and exercised the functions of witnesses, who, being of the vicinage, were presumed to form their opinions and bring in their verdicts from their own knowledge, which of course, not only would not at present be tolerated, but constitutes an absolute disqualification and a cause for challenge. Despite the presence of the jury, the continental judge of the Latin races, like the Roman magistrate who directly represented the whole body of the people, practically determines both the law and the facts, a rule, at times, productive of great abuses.—Ed.

² The punishment of an unjust or corrupt judge, as stated in the text, is much less severe than it was under the Visigoths, who, in flagrant instances, imposed the penalties of confiscation of property, or scourging or reduction to servitude in case the offender did not have the means to make restitution to the injured litigant. "*Quod si non habuerit unde componat, cum his qui habere dinoscitur, ipse iudex illi cui componere debuit, subiceat serviturus, aut L publice extensus flagellu suscipiat.*" (For. Jud. II-1-19.) The *lex talionis* was also applicable to both civil and criminal cases by the Visigothic Code, and under circumstances involving gross corruption or notorious abuse of power was enforced with relentless severity.—Ed.

all, he shall receive such punishment, and in the same way as we stated above in the case of a judge who accepted something in consideration of a decision he was to render in a case of this kind. Where an accused party gives or promises a judge anything to induce him to acquit him of the offense with which he is charged, he should be punished just as if he had confessed, or the accusation against him had been proved; for it can be easily understood that he is guilty, since he endeavored to corrupt the judge with money or gift; except where it is certain that he did not commit the offense of which he was accused, but that he gave something to the judge through being afraid to conduct his case, because he was a man deficient in courage.

Where opponents do this, in a case which does not involve a criminal charge, they should pay the king three times the amount they gave the judge; and twice as much as they promised him and had not yet given him; and, above all, the party who does this shall lose all the rights which he has in the case.

Where, however, the party who gave or promised anything to the judge, as above stated, reveals it, coming and making confession of his own accord, and can prove this before the king, or before some one who is his superior in office; he shall not receive any punishment, but the judge shall pay the fine, as aforesaid. If he cannot prove what he says, so that it appears that he acted with evil intent, being impelled to make malicious statements concerning the judge in order to render him infamous; he must pay to the king as much as the property in question is worth. But where this happens in a criminal case, and the party reveals to the king that he gave, or promised something to the judge to induce him to decide in his favor; we decree that if he cannot prove this, he shall forfeit all his property to the royal treasury, and that the case shall proceed. The judge to whom he declared that he gave or promised a reward, may purge himself by his oath, and be free.

LAW XXVII.

When Persons Who Gave the Judge a Reward for Deciding in Their Favor Can Demand What They Gave Him, and When They Cannot.

When it happens that a litigant who has a bad case, gives anything to a judge in order that he may decide wrongfully and for his benefit, or that he may protract the case and not render judgment at all; we decree that for neither of these reasons he can demand that he return him what he has given him, and it will be sufficient if the judge pay it to the king, as we stated in the preceding law. But where a party gives anything to a judge to induce him not to decide against him wrongfully, or to induce him to decide justly, he can ask him to return it, as wickedness and hostility were manifested on the part of the judge because he received the reward, accepting it as a consideration for what he was bound to do simply for the sake of justice and on account of his oath. And if at the time that the party gave anything to the judge he was silent, or told him he gave it to him that he might decide in his favor, he cannot afterwards ask him to return what he gave him, because he desired to excite his covetousness for the sake of fraud; nor should what the judge accepted remain his own, because he acted contrary to probity, and against the laws and in violation of his oath, but he must surrender it to the king, because he is entitled to the property which it has been proved that judges wickedly obtain by reason of their office.

TITLE XXIII.

On the Appeals Which Parties Take When They Consider Themselves Prejudiced by Judgments Rendered Against Them.

Men should make comparisons between different things in order that those who hear them may understand them better. Wherefore we decree that just as persons who are in danger at sea are greatly comforted when they find anything they can seize hold of, or any place in which they can seek refuge in their desire to avoid such danger, and also men who are conquered by their enemies, when they arrive at a place where they think they can be protected from those who follow them to kill them; so those against whom judgments are rendered by which they consider themselves wronged experience likewise great comfort and ease when they find any way by means of which they think they can escape or protect themselves from those by whom they are injured. There are four kinds of this protection, and these are either by an appeal, or by asking mercy of the king, or by delivery petitioned for by minors on account of a decision given against them, or by complaint of some judgment which they allege was rendered falsely or against the regular order which the law directs to be observed in decisions.

Wherefore, since in the preceding Title we treated of judgments, which are, as it were, the end and completion of actions at law by which litigants are victorious, or are defeated, and run the risk of suffering injury or punishment, as we have stated; it is well for us to explain in this Title, how those who consider themselves wronged by judgments may obtain relief; and, in the first place, to speak of appeals, because they are more accessible to all. We shall state what an appeal is; what advantage is derived from it; who has the right to appeal, and from what kind of a judgment he can do so; and from what judges, to whom, when, in what way, and within what time he can appeal; within what time he can prosecute an appeal; how many times a man can appeal with respect to one matter; what he who appeals should do, from what judge he may take an appeal; and also how the appellate judge who is to decide the case should act.

LAW I.

What an Appeal Is, and What Advantage Is Derived From It.

An appeal is a complaint which one of the parties makes concerning a judgment rendered against him, invoking, and having recourse to a superior judge for the purpose of correcting it; and an appeal is advantageous when it is justly made, because, by means of it the injuries which judges wrongfully, or through want of knowledge, commit against parties, are disposed of.

LAW II.

Who Can Appeal.

Any free man can appeal from a judgment rendered against him, if he considers himself injured by it. A slave cannot do this, because he, himself, and everything he has belongs to his master, and, not being a person, he cannot appear in court, except in those cases in which a slave can bring suit, as we stated above in the Title concerning Plaintiffs. Where, however, a judgment is rendered against a slave in a criminal case, his master, or any attorney can appeal from it in the name of his master. If none of these are willing to do so, the slave himself can appeal from a judgment of this kind rendered against him. But where a judgment is rendered against his master on account of any offence of which he is accused, then a slave cannot appeal by his master, although his son, who is under his control, can do so. We also decree that a son

who is under the control of his father can appeal from every judgment rendered against him, which has reference to the property of the son of which the father has charge, no matter where he may have obtained it. Moreover, we decree that the guardians of minors, and other attorneys who bring suits or defend them in the names of others, can appeal from judgments rendered against them; and not only can they do this, but also the attorneys whom they have appointed to conduct cases in which they were defeated, can also appeal for them. This is understood to refer to cases where guardians or attorneys appoint other attorneys in their stead, in suits which they have begun by complaint and answer, for before this they can not do so, as we stated in the Title treating of Attorneys. We also decree that a judgment rendered against an attorney in any case which he brought or defended for another party, and the attorney does not appeal from it, his constituent can do so, although he may not have been present in bringing or defending the suit; and where an attorney, after he was defeated, did not appeal, as we have stated, or inform the party interested in the suit that he was beaten, the constituent can appeal within ten days from the day on which he learned this. Where the attorney has any property with which he can make reparation to the principal in the case, he should pay him all losses which he has incurred through his fault, because he did not appeal when he was able and should have done so, and did not inform him within the time fixed for taking an appeal. When the judgment will stand and the principal will have no reason to appeal, but where the attorney has nothing to make payment with, then the principal in the suit can prosecute his appeal, as we stated above.

LAW III.

How an Attorney Should Appeal When a Judgment Is Rendered Against Him.

Where an attorney was appointed to conduct a particular case, and a decision is rendered against him in said case, he should appeal from it, and he can prosecute the appeal, if he desires to do so, although he may not have been granted permission to do this in his power of attorney but if he does not wish to prosecute the appeal he is not bound to do so, although he should take the appeal and communicate the fact to his principal in the suit, so that he can prosecute it if he so desires. Where, however, the attorney was appointed generally to conduct all the cases of the party for whom he acts, or it is unequivocally stated in the power of attorney that he can or should prosecute appeals, then he is, under all circumstances, bound to take an appeal, and prosecute it, even though he does not desire to do so.

LAW IV.

Persons Can Appeal Who Are Affected Either by the Advantage or the Injury Resulting from the Case in Which a Decision Is Rendered.

Not only the principals in suits, or their attorneys can take an appeal when judgment is rendered against them, as we have shown, but also all others who are affected by the benefit or disadvantage which may result from said judgment. This would be the case where a decision was rendered against a party involving property which he had purchased from another, and he did not appeal; and we decree that a vendor can appeal from said judgment, because he is bound to make reparation for the property which he sold. We decree that the same rule shall apply if a vendor loses his case where the property he sold was in question, and the purchaser can appeal from said judgment, if he

desires to do so. We also decree that if a vendor, against whom judgment has been rendered, appeals and prosecutes the appeal, and the purchaser has suspicions of him, thinking that he may not conduct the suit properly, and states this to the appellate judge, he should not proceed farther with the case, unless the purchaser who may examine and protect his rights therein, is present. Moreover, we decree that where a judgment is rendered against a debtor involving property which he has pledged to another, and he does not appeal from it, the party who holds the property in pledge can do so. If the party who pledged the property should take an appeal, and he who holds it in pledge should suspect that the debtor will not conduct the suit justly, he, himself, can attend to it and prosecute the said appeal, just as if he had taken it. However, where a debtor, in his turn, conducts a suit against another concerning property which he pledged, and loses his case, and the party who holds the pledges does not know it, a judgment of this kind is no hindrance to him, even though an appeal was not taken from it.

Moreover, we decree that a surety can appeal from a judgment rendered against the party for whom he is responsible where the debt or the property with regard to which he gave security is concerned. We also decree that where a party loses his case in court, in which property he had purchased was involved and concerning which the person who sold it gave a surety, he who did this can appeal, although both the purchaser and the vendor consented to the judgment. Moreover, we decree that a father or a mother can appeal from a judgment by which their son was decided to be a slave.

LAW V.

Where a Decision Is Rendered Concerning Property Which Belongs to Several Persons All Profit by An Appeal Made by one of Them Although the Others Did Not Appeal.

Where it happens that a decision is rendered concerning property, whether movables or immovables, which belongs to several parties in common, and one of them appeals from said decision, and prosecutes the appeal so that he gains the case, he not only benefits himself but all his associates, just as if all of them had taken the appeal and prosecuted the suit. But where a decision of this kind was not set aside by an appeal, but because one of the parties was a minor, and asked for restitution; in a case of this kind the other parties will not be benefited by the judgment which such a person obtained, and, for this reason, the decision will stand against those who did not appeal. We also decree that if the decision was rendered concerning some right, which one house had in another, or some field in another, and any person to whom said right belonged in common with others should take an appeal from said judgment, the others will profit by it just as if they themselves had appealed; except where that right was the usufruct of any property which several persons were entitled to enjoy for life, or for a specific time. For if judgment were rendered concerning it, an appeal taken by one would not benefit the others who did not appeal. We also decree that when there are several guardians of one minor and they are conducting a suit for him, an appeal taken by one of them will benefit another, just as if he had appealed. This is understood to be the case where all of them come in, demand, and obtain the property of the minor; but he who does not participate in this cannot appeal from a judgment rendered against his associate who exerted himself in the matter, and even though he may do so, this will be of no benefit to the other party who did not take an appeal.

LAW VI.**A Relative Can Take an Appeal in Behalf of a Party Condemned to Death or to Punishment, Although the Other May Not Have Granted Him Permission to Do So.**

A relative of a party against whom judgment has been rendered in a criminal case involving the shedding of blood, has a right by reason of their relationship to appeal in his behalf, although the party against whom the judgment was rendered may oppose it. Moreover, any stranger whosoever can do this, on account of the love or the pity which he may entertain toward the condemned person, even if he cannot produce any power of attorney by which he was granted permission to take an appeal; but the party against whom the judgment was rendered should consent to the appeal which the stranger took in his behalf, for, if he does not, it will not be valid and the judgment rendered against him must be executed, since he did not appeal or give permission to anyone else to. But when a relative takes an appeal in his behalf, as above stated, although the condemned party may state in court that he does not wish an appeal to be taken for him, and that he does not consent to it, the punishment should not be inflicted upon him, because of said judgment, until the appeal has been decided by the judge to whom it was taken. This the wise men of the ancients considered proper for the following reason, namely; because though the condemned person may desire to die and may have to endure the penalty, nevertheless, for the reason that the blemish of dishonor will always remain upon his family, they declared that his relative could take an appeal for him and prosecute it, even though the other party was not willing that he should do so.

LAW VII.**Those to Whom Anything Has Been Bequeathed by Will Can Appeal from a Judgment Rendered Against the Heirs of a Testator.**

Men make testaments in which they leave bequests, institute their heirs, and divide their property, according to the judgment of their free will, and it sometimes happens that, after a testator is dead, his relatives institute proceedings against his heirs, and against his testament, stating that the latter should not be deemed valid, because it is not made according to law and in compliance with justice. Wherefore we decree that where, in a contest of this kind, judgment is rendered against the heirs and they do not appeal from it, the others to whom property was bequeathed by the will can take an appeal and prosecute it, because if the will were set aside on account of said judgment which was rendered against the heirs, the bequests included in it would not be valid, as we have shown in the Title concerning Wills. Moreover, we decree that if the heirs appeal from said judgment, those to whom property was bequeathed by the will can join the heirs in prosecuting said appeal; especially if they suspect that they will not conduct the case properly, by corrupting their adversaries for their own advantage, and to the injury of the others.

LAW VIII.**Those Appointed to Hold Certain Offices, or Guard Gates, Can Appeal.**

The king frequently orders certain men to be selected in cities and towns to guard the gates. Wherefore when any of those appointed by a council for this purpose considers himself aggrieved he can appeal to the king, in order to give a good reason, if he has any, for which he should not, or cannot act; and if, in the meantime, while the appeal is pending, the property connected with the

guard of the party who appealed should sustain any damage which can be traced to the gate which he was appointed to watch, he is bound to make good said loss, if the king finds that his excuses are not just, or if he cannot prove them. If he finds that his appeal is just, those who selected him are bound to pay it, with the approval of the king, if he can ascertain that they made the selection maliciously. But where some good man is appointed the guardian of a minor and his property; or a judge orders him to protect and take care of the property of some person who is insane, or has lost his memory, or is a spendthrift, no appeal can be taken from an order of this kind. If, however, he has a lawful excuse by which he can avoid taking charge of said property, he should give it in court within fifty days, and the judge must accept it if it is just, as we stated in the Title which treats of the Guardianship of Minors; and where the judge does not accept his excuse, but orders him in court to assume said guardianship, in this instance the party who considered himself injured by such an order can appeal. Where the appellate judge finds that his appeal was not properly taken, or that the excuse which he gave was not sufficient, he should be compelled to take charge of the persons aforesaid and their property, and he should also pay all damages and losses which said minors or other persons suffered through want of guardianship, from the day when he was selected as guardian until final judgment relative to the excuse is rendered.

LAW IX.

**For What Reasons He in Whose Favor a Judgment Is Rendered Can Appeal;
and Also Why the Appeal of a Person Who Is in Default
Cannot Be Received.**

Parties against whom judgments are rendered appeal, as is shown above, and others also in whose favor they are rendered can sometimes do so as we shall explain in this law. This would be the case when anyone, in whose favor a judgment has been rendered, thinks that it is not as complete as it should be, where it was decided that the land which he demanded with its fruits, was given to him without them; or where the defeated party was not ordered to pay the expenses lawfully incurred by him who gained the suit; or where judgment is rendered in any other way similar to these, which did not fully correspond with the claim, the evidence, or the arguments submitted in the case.

When, however, the party in whose favor the judgment was rendered, is in default and unwilling to come and hear it upon the day which the judge appointed for him to do so; and, afterwards, when he learns that it had been rendered, he desires to appeal from said judgment, he cannot do it. We decree that the same rule shall apply where either of the litigants was defeated, for he cannot appeal from the judgment rendered against him, if he was in default in refusing to come at the time appointed by the judge to give his decision; and this the wise men of the ancients considered proper because his disobedience resembles pride, disdain, or insubordination, when a party refuses to appear before the judge whom he should obey as his superior. If, however, the defendant was not in default in not appearing before the court, but manifested insubordination in not producing or surrendering the property for which suit was brought, and for this reason the judge compelled him to pay as much as the other party swore that he had lost because the said property had not been produced or delivered in compliance with the demand made upon him, the party against whom such a judgment is rendered can appeal from it, if he desires to do so, because, although he was disobedient in not complying with the order of the judge, nevertheless, he was obedient in appearing before

him at the time appointed for him to hear the decision, and therefore we decree that it is right that obstinacy of this kind should not be an impediment to his taking an appeal, if he considers himself aggrieved.

LAW X.

Those Who Are With the Army, or on a Mission of the King, or Absent for the Common Benefit of Their Council at the Time When a Judgment Is Rendered Against Them, Can Appeal from It on Their Return.

Men go with the army, or on missions for the king or for the common benefit of his council, and leave attorneys in their places to protect their rights, and at the time judgment is rendered against them they are not present and cannot appear, although they may be summoned. For which reason we decree that if the attorney of anyone of said persons does not defend him properly, or does not appeal from a judgment rendered against him, he himself can take an appeal within ten days from the day he returns to his home, or is informed of said judgment. If, at the time when any of said persons departed from the country he did not leave an attorney to protect his rights, under such circumstances a decision given against him will be no hindrance to him and he can ask the judge, by way of restitution, to place the case in the same condition as it was on the day when he left his house to go to any of the places aforesaid, and the judge should do this, because he was prevented from prosecuting his suit for a lawful and proper reason.

We decree that the same rule shall be observed where a judgment is rendered against the party who is in captivity.

LAW XI.

How an Appeal Can Be Taken from a Judgment Rendered Against a Party Who Is Absent on a Pilgrimage, or at School, or Who Was Banished on Account of Some Offence Which He Had Committed.

Some men go on pilgrimages or to school for the purpose of serving God, or of learning some science, and it may happen that summonses will be left at their houses, directing them to appear and hear the decisions in suits which they have begun by answer before judges previous to their going on said pilgrimages or to school. For which reason we decree that where a decision is rendered against any one of these, and he had an attorney, or some other man who could lawfully defend his suit, acting for him, he cannot appeal from said decision when he returns, although he may consider himself aggrieved by it. But where he left an attorney, who died before the case was terminated, and, after his death, a decision is given against said attorney whom he left in his place, when the party returns he can petition the judge, within ten days from the day when he arrives at home and learns of the decision, to place the suit in the same condition in which it was before he went on the pilgrimage, or to school, and the judge should do so; and we decree that he must do the same thing, if the party, before he left, could not find an attorney to whom to entrust the suit, for the reason that it was important, and he was unable to employ one who had sufficient knowledge to defend it. This, however, will not be sufficient, unless he swears in the first place that he did not act maliciously. We decree that the same rule shall apply where a party has been banished or imprisoned on account of some offence which he has committed.

LAW XII.**How a Party Can Appeal, Who, While on the Way to Hear a Decision Was Forcibly Detained, So That He Could Not Arrive at the Appointed Time.**

Men fraudulently hinder or detain their adversaries after they have caused them to be summoned to come and hear a decision, or proceed with a case which they had begun by answer, by delaying them on the way by fraud or force, so that they do not arrive at the appointed time and a judgment is rendered against them. For this reason we decree that when a party was detained in this manner, or where impediments were placed in his way by his opponent, and the fraud or force can be proved, the decision shall not stand; and we decree that the judge must place the case in the same condition in which it was before judgment was rendered with regard to it. When the fraud or force by which the party was detained, so that he could not come and hear the decision, was caused by another man and not by his opponent, the case should then not be placed in its former condition, but the aggrieved party can appeal from the decision, within ten days after it has been rendered against him, if he desires to, and can prosecute his appeal. The same rule will apply where the party who was to come at the appointed time, was prevented by heavy snows, or by swollen rivers, or by robbers, or by his well-known enemies who occupied the road, or by some serious illness which befell him.

LAW XIII.**From Which Judgments Appeals Can Be Taken, and from Which They Cannot.**

Men are sometimes injured by judgments rendered against them, for which reason they are afterwards compelled to appeal. And because some persons think that they can take an appeal from any decision rendered against them, we desire to show from which judgments appeals can be taken, and from which they cannot; and we decree that from every final judgment, any person, whosoever, can appeal who considers himself injured by it; but from any order made, or decision given, by the judge in the course of the suit, before final judgment is rendered with regard to the principal point at issue, no one can, or should appeal, except where a judge wrongfully orders that torture shall be inflicted upon anyone, in order to ascertain the truth of some offense, or of some case which has been brought before him; or where he unjustly orders something else to be done, which is of such a character that, when it is finished, it cannot afterwards be easily corrected, except to the great injury or disgrace of the party who considers himself wronged by it. For, under such circumstances, an appeal can be taken, although the judge may not yet have rendered a final decision with regard to the principal question at issue; but from any other order or decision made or given by a judge, the wise men of the ancients, who established the rights of the law, deemed it proper that no one should be able to appeal, even though the party considered himself injured by it.

They made this rule for two reasons. First, in order that the vital matters in suits might not be prolonged or interfered with, under pretext of appeals taken on account of such annoyances. Second, because at the time when final judgment is to be rendered, the party who considers himself wronged by the judge may be able to appeal, and be safe, so that he can explain and show to the appellate judge all the injuries which he received in the case before the first court; and for this reason he should not take an appeal except from judgments which we have mentioned above; although according to the law of decretals, in some countries the contrary practice is customary, and an appeal can be taken on account of any wrong done to the parties by the judge. Moreover we decree that where the plaintiff and defendant enter into an agreement with each other, in or out of court, that they will not

appeal from the decision rendered by the judge against either of them, the party who considers himself injured by it cannot afterwards appeal.

We decree that the same rule shall apply where any person lost his case and had to pay something to the king, whether by reason of an account, or as a tax, or in settlement of any other debt whatsoever; and that he cannot afterwards appeal from a decision once given against him, but shall be compelled to make payment at once. We also decree that when the king orders any men to decide certain cases in such terms that none of the parties can appeal from the judgment rendered by them, he who considers himself injured by their decision cannot afterwards take an appeal. However, no judge except the king alone, can issue an order directing any other party to hear special cases.

LAW XIV.

An Appeal Can Be Taken from the Entire Judgment, or from a Part of It.

When either of the parties considers himself aggrieved by a judgment rendered against him, he can not only appeal from the whole of it but from any portion of the same, if he so desires. This, however, should be understood to apply when the suit was brought for several causes, and the judge dismissed some of them, and decided against the others; for an appeal can be taken relating to those which he decided against, and the judgment will stand with reference to the others from which no appeal was taken. Moreover, we decree that where anyone is accused of several offences and crimes, or different kinds, and the judge finds him guilty of all of which he was accused; and he appeals from the judgment involving the more serious offenses and does not mention those of inferior importance of which he was convicted; the judge shall receive his appeal, and must not inflict punishment for the minor offences until those concerning which he took an appeal have been decided. When he appeals from his conviction of the offenses and crimes of inferior importance, and not from that of the more serious ones, his appeal should not be entertained; but punishment for the other offences from the conviction of which he did not appeal should be inflicted upon him, according to the terms of the sentence.

LAW XV.

How an Appeal Can Be Taken from the Interpretation of Some Doubtful Decision Made by a Judge.

When doubt arises between the parties concerning the words of a judgment rendered between them, in such a way that each understands their meaning in a different way, and they afterwards return to the judge who gave the decision, in order that he may tell them what his meaning was when he spoke those words and explain it to them, and the judge interprets the language for them; if either of the parties considers himself injured by the interpretation given by the judge, he has the right to appeal to the king; and in an appeal of this kind the parties should not discuss any other matter except as to whether the explanation which the judge made of the obscure words in the decision was right, or not.

Moreover, we decree that when judges are in doubt as to how they should render their decisions, and desiring to be sure in this respect, send the king their letters stating the progress of the case; and if, when they do this, either of the parties should complain, saying that they had sent insufficient statements, or had made additions to them, or that they had inserted them in another form than that in which they appeared in the first place; if the judges are not willing then to make the correction, an appeal can be taken from an injury of this kind. We also decree that where the king sends his answers to judges who made such an inquiry of him, ordering them to decide the case, and any of the parties considers himself aggrieved by reason of this, he has a right to appeal to the king.

LAW XVI.

**Notorious Robbers and Other Persons Mentioned in This Law Cannot Take
An Appeal from a Judgment Rendered Against Them.**

Well-known thieves and agitators of the people, and their heads or principals, in these wicked uprisings; and violators and robbers of virgins and widows, or of other women belonging to religious orders; and counterfeiters of gold, silver, and money, or the seals of the king; or those who produce death by means of herbs, or treason, or perfidy, and such persons who can be proved by reliable witnesses, or by their own confessions made in court without compulsion, to have committed any of the aforesaid offences, we order, as soon as proof has been established, shall have sentence passed upon them as the laws of this our book direct; and although the party may desire to take an appeal from the sentence pronounced against him, we forbid that it be received. We consider this proper because those who commit such crimes, are guilty of serious offences against God, against Us, and against the common welfare of the people.¹

LAW XVII.

**From Which Judges an Appeal Can Be Taken, and from Which
Ones It Cannot.**

Judges are of several kinds, as we showed in the Title treating of them. And, for the reason that some persons may be in doubt from which of them an appeal can be taken, and from which it cannot, we desire to show this in this law; and therefore we decree that they can appeal from all judges, not only those who are appointed to decide every kind of case but also from those appointed to hear special cases, excepting in those instances which we have previously mentioned in the laws of this Title, where no appeal can be taken. If an emperor or a king renders a decision, no one can appeal from it. There are two reasons for this; first, because they have no superiors, so far as temporal matters are concerned; second, because they are lovers of justice and truth, and have always with them in their

¹ In former times, in all civilized countries, the offences committed by criminals against society, and especially felonies, were considered to preclude the proceeding from review by a superior tribunal. This rule, as authoritatively stated in the *Partidas*, no longer prevails in Spain. All parties to a criminal prosecution, including those representing the Crown, and even the heir of the person convicted in case of the death of the latter, have, on proper grounds, the right to go up to the Supreme Court on appeal. The applicant must, within five days after notice of the sentence, file a petition in the tribunal that heard the case, praying for a certified copy of the judgment upon which to base proceedings in the court of last resort. This must be issued in three days from the time of the application, and it is mandatory that the petition be filed with the Supreme Court within fifteen days after consent has been granted. The attorney for the government has the closing argument before the Supreme Court, the reverse of our custom. Both sides submit briefs. The decision of the court must be published not more than ten days after the case has been heard. The rules relating to the final adjudication of questions involving infractions of law, the determination of error, and the proper execution of documents by the Supreme Court, are laid down with great minuteness and perspicuity, and are judiciously framed with a view to protect both the rights of the State and those of the party accused. Where the latter has been convicted, and has served his sentence—even though he may be dead—his widow, or near relatives, may, in the interest of justice, petition the Supreme Court for a rehearing and revision of his case, in order to remove the stigma from his reputation, and punish the true perpetrators of the crime. This is a legal advantage far greater than those enjoyed by the families of citizens in many other countries. (*Ley de enjuiciamiento Criminal Reformada*, V-1-1.) The criminal law of France accords similar but less favorable privileges to a convicted defendant. (*Code d'Instruction Criminelle et Code Penal* III-II).

At Common Law the principal appeal recognized was that of the wager of battle. This subject, congenial to the spirit of a semi-barbarous age is treated at great length in the ancient treatises. There was also an appeal that might be instituted by one person against another, because of the commission of a felony, which was rather a private suit for damages or pecuniary compensation, than a criminal prosecution as we understand it, and originated in the practice of exacting satisfaction from a guilty party, at a time when a regular schedule of offences existed, each of which could be expiated by the payment of a fixed sum of money. "None but the heir by the course of the common law shall have an appeal of the death of his ancestor." "A man of 70 or an infant may have an appeal, and yet battail shall not be waged." (Danvers, *A General Abridgement of the Common Law*, I-488. Art. Appeal.) A widow, however, was entitled to an appeal of the death of her husband; "*Feme avera appel de mort son baron, mes nemy dascun autre, come appiert per lestatut de Magna Charta cop. 33 qui dit in tiel maner: Nullus capiatur aut imprisonetur propter appellum femine, de morte alterius quam virisui.*" (Staundforde. *Les Plees del Coron* II-7.) Such were the "appeals" known to the old common law.

While the right of review by a higher court has always been an undisputed privilege of a defendant in a criminal proceeding in the United States, it was only as late as 1907, through the enactment of a special statute establishing a tribunal for that purpose, that it was conceded by the laws of England. (7, Edward VII, C, 23).—Ed.

court men learned in the law, in order that every person may think that their decisions are equitable and complete. Nevertheless, it may be asked of them, as a favor, to examine if there is anything to correct or improve in what they have determined, and to do in the matter whatever they think proper and right. An emperor or a king can grant such a request if he desires to show the party grace, as we shall show hereafter in the laws which treat of this subject.

We decree that the same rule shall apply to the Chief *Adelantado* of the Court of the King, from whose decision no appeal can be taken; and this is the case on account of his superiority over all the other officials of the kingdom, and, moreover, in order that all men may believe that a man who is appointed to hold such an important office is wise and faithful, and has always with him men learned in the law, intelligent, and endowed with good natural prudence.

We also decree, that when judges of arbitration render a decision against either of the parties who placed their case in their hands, the party who considers himself aggrieved cannot appeal from the same. This is the rule because arbitrators have no power to decide, as other judges have, except by agreement of the parties, nor are those who bring their cases before them required to obey or observe their judgments, except on account of the penalty agreed upon between them. If, however, it should happen that, after the case has been placed in the hands of arbitrators, one of them should manifest openly that he is the enemy of the plaintiff or of the defendant; and the party who has ascertained this declares in the presence of said hostile arbitrator that he should not render a decision, or proceed farther with said case, and he afterwards renders a decision, said decision can be set aside by the party who, in the first place, confronted him in this manner in court, and, moreover, by reason of this he can protect himself from the penalty demanded of him by the other party because he did not obey the judgment of the arbitrators, as we have shown in the laws which treat of Judges of Arbitration.

LAW XVIII.

To Whom a Party Who Considers Himself Injured by a Decision Rendered Against Him Should Appeal.

Where any person is injured by a decision rendered against him by his judge, he can appeal from it to another who is the superior of the latter in rank. The appeal should, however, be conducted in the following manner, to-wit; by ascending from one rank to another, from the inferior to the superior and not omitting any intermediate magistrates. Wherefore, if any person is injured by a decision rendered by a judge whose duty it is to decide all the cases of a certain town, and he has to appeal to another judge or in another district, he should go there first and if he thinks that he is wronged by what is ordered he can appeal to another superior magistrate, if there is any, who has authority to decide—and afterwards to the king. If, however, anyone desires to first appeal to the king before submitting his case to other judges, we decree that he has the right to do so. This is the case because the king exercises sovereignty over all and has authority to decide between them, but where anyone appeals through mistake to another magistrate, who is higher in rank than the one to whom he should have appealed, or of the same rank should decide the case, but for the reason that he should send it to the other who has as the one who had decided against him, the appeal will be valid; not because he the right to determine it.

If he should appeal to a magistrate inferior in rank to the one from whom he took the appeal, it will be the same as if none had been taken. We decree that the same rule shall apply to a magistrate out of the jurisdiction where the party belongs, for he will have no authority to render a decision, as an error of this kind cannot be overlooked, although it may appear that he did not intend by it to delay the prosecution of his suit.

LAW XIX.**Who Should Hear Appeals Made to the King.**

Those who sit daily in the Court of the King should hear and determine appeals made to the king from other judges from whom an appeal can be taken. Where, however, a case in which more than five hundred maravedis are involved is appealed, these judges should not hear it, unless the other superior magistrates, to whom the parties may appeal from these decisions which these said judges render, are present. But if anyone appeals from those who hear cases every day in the king's palace to the other superior magistrates whose duty it is to hear appeals; and the appeal relates to a suit where more than the value of five hundred maravedis is involved, although they are bound to decide appeals from the decision of other judges brought before them, they should not hear one of this kind without having an understanding with the king. We order this on account of the dignity of the sovereign, and if he can not hear it on account of being pressed for time, or because of some obstacle which may exist, he should agree with the superior magistrate and the men of his court who are the most learned in the law, in order that what he does may be accomplished with more prudence and security.

Moreover, we decree that if anyone is wronged by a decision of the chief the suit of the parties, or decide it if any of the parties feels aggrieved by the order or judgment; he must not appeal to anyone else but the king who ordered this to be done.

LAW XX.**The King Should Decide Appeals and Cases Which Widows, Minors, and Other Persons of This Kind Take to the Court.**

Where widows or minors have appeals, or other cases for which they are compelled to resort to the Court of the King, he should decide them. This is the case for the reason that although the king is required to protect all the people of his country he should especially protect such as these, since that they are, as it were, unprotected, and are more destitute of advice than others. We decree that the same law shall apply to others who are so poor that they are not worth twenty maravedis, and also to those who have been rich and honored, and afterwards become so oppressed with poverty that the king understands that they have greatly fallen from the condition in which they were accustomed to live; and also to such as are very old, and come in person to conduct their suits. For when persons of this description appeal to the king he should be influenced by pity so as to himself decide their cases, or appoint someone to do so speedily. We also decree that if, on account of anyone's complaint, the king orders another person, by his letter, to hear the suit of the parties, or decide it; he must not appeal to anyone else but the king who ordered this to be done.

LAW XXI.**To Whom Appeals Should Be Made from Decisions Rendered by Judges Appointed to Decide Special Cases.**

A deputy judge means one appointed to hear certain particular cases, as we have already stated in the Title which treats of Judges. Wherefore we decree that when a judge of this kind has to decide any case by order of the emperor or the king, and commissions another to hear it; and the person to whom it was entrusted renders judgment in said case, the party who considered himself wronged can appeal to said deputy judge who was ordered to hear it. But if the judge himself heard and decided it, and did not commission another to hear it, the aggrieved party

should then take an appeal from him to the emperor or to the king, as we stated in the preceding law; and if a magistrate of this kind is ordered by an ordinary judge to decide some particular case, and after it was begun by answer before him should entrust it to another; and the party who was commissioned to hear it should decide the case; we decree that the party who considers himself aggrieved, must appeal to the ordinary judge, and not to the one whom the latter directed to hear the case.

LAW XXII.

When, and in What Way, and Within What Time, an Appeal Can Be Taken.

It is very necessary for men to know when, and in what way they can appeal from decisions rendered against them, if they consider themselves injured thereby. For which reason we desire to show here and we decree, that just as soon as a judgment has been rendered against anyone, by his merely uttering the words: "I appeal," this will be sufficient; although he may not state to whom he appeals or for what reason, for it is understood that he appeals to those superior magistrates who have authority to pronounce judgment. But if at that time, just as soon as the judgment has been rendered, he does not appeal, he cannot afterwards do so orally; but he can do so in writing within ten days from the day on which the decision was rendered against him; and a document of this kind should be drawn up in the following manner; "I, So-and-So, considering myself injured by the decision which you, So-and-So, have rendered against me, in favor of such-and-such a man my adversary, with regard to such-and-such property (describing it specifically), appeal to the king, (or to the judges whose duty it is to hear appeals by his order) and I ask that you give me your letter for him, and a copy of the decision, and the transactions of the case as they took place before you." And when he presents the document he should read it before the judge, if he desires to hear it and he finds him in a suitable place where he can do so; and if he does not find him, or he avoids him, fearing that he may wish to do him harm or dishonor him because he appealed from his decision, he should read it publicly before reliable men, giving them notice that he appeals from said decision.

LAW XXIII.

Within What Time an Appeal Can Be Prosecuted.

When a party takes an appeal he can prosecute it within the time appointed by the judge, and if the judge does not appoint a time within which he should prosecute it, we order that the appellant be required to prosecute it within two months, and if he does not do so within that period, the judgment by which he was injured shall stand and be secure. We also decree that if the party who appealed does not appear before the appellate judge at the time appointed, or prosecute the appeal either by himself or by his attorney, the judgment from which he appealed shall stand, and he shall pay the costs to the other party who appeared before the judge. And if the party who took the appeal prosecutes it, and the other party does not, the appellate judge should examine the papers, hear the arguments, and decide as he thinks is right; and he should not fail to render a decision even though the other party may not be present if a time had been fixed for him to appear. Where no such time has been fixed, he should summon him to appear, prosecute the appeal, and hear the decision, and, if he afterwards does not come, the judge should decide the case which has been appealed as he thinks is just. Where it happens that neither of the parties prosecutes the appeal within the time aforesaid, we order that the judgment from which the appeal was taken shall be valid, and that neither party shall pay the other's costs.

LAW XXIV.**Festival Days Should Be Included in the Time of the Periods Fixed for Men to Appeal, or to Prosecute an Appeal.**

Festival days, as well as others, should be included in the fixed periods in which men have to appeal and prosecute their appeals; and where anyone appeals at a time when he should not do so, or prosecutes an appeal after the time has elapsed within which he should have appealed, if the other party is present before the appellate court, he can allege against him that he should not be heard, and that the judgment of the first judge should be carried out; and where the party is not present, the judge, at his own instance, can order this to be done, if he knows positively that the party appealed when he should not have done so; or where he desires to prosecute an appeal after the time has elapsed in which he should have done this the judge should not hear it. If, however, the time in which he was to prosecute the appeal has gone by, for the reason that the judge could not, or would not hear it, then no embarrassment whatever can result to the party who appealed, for the judge should hear him, and he can prosecute his appeal just as if the time had not elapsed.

LAW XXV.**How Many Times a Man Can Appeal with Regard to the Same Matter.**

A man can appeal twice from one and the same judgment rendered against him on account of any property or any act, but where after both judgments have been confirmed by the appellate judge, the party against whom the decision was given cannot appeal the third time; for we hold that a case which has been determined and perfected by means of these decisions, is just, and it would be a grave matter to expect a fourth decision concerning one and the same thing. But where an appellate judge sets aside the first two judgments, stating that they were not rendered according to law, in this case the party affected can take an appeal.

LAW XXVI.**What a Party Who Takes an Appeal, and Also What the Judge from Whom He Appeals, Should Do.**

Those who appeal ought to be temperate in their language, so that although they consider themselves wronged by the decisions of the magistrates, they may not misjudge the latter by speaking evil of them, or stating that they had given wrongful decisions, or by manifesting contempt for them in other ways; but they should ask them gently to furnish them with the transactions of the case, and with the arguments as they were made, and with the judgment based upon them; and the judge from whom they appeal should do this, furnishing them with a true and faithful copy of everything, not adding or omitting anything, and he should seal the document with his seal. This should be done within three days after they appealed from his judgment, for, if done in another manner, the judge who has to decide the appeal cannot readily ascertain whether the party lawfully appealed or not, and if the judge does not give the document, as above stated, we order that all damages suffered by the party, through the want of said document, and the costs and expenses which he incurs, shall be paid to him by the judge.

Moreover, we decree that as soon as he has given said document to the parties, he must appoint a proper time within which they can present and prosecute the appeal before the king, or before the judge who is to decide it; and we also consider it proper, and we order that as soon as the case comes before the appellate court, the other judge from whom the appeal was taken shall not proceed further

with the suits or make any disposition of whatever the judgment was rendered for. And above all, we forbid a judge to dare to insult or maltreat a party who appeals from his decision, but we command that he grant him his appeal, as the laws of this our book direct.

LAW XXVII.

What a Superior Judge, Whose Duty It Is to Decide an Appeal, Has to Do, and Concerning the Costs Which the Losing Party Has to Pay.

The first thing that the superior magistrate who is to decide an appeal, has to do, is the following, namely; when the parties, or any of them, appear before him, he should open the paper containing the appeal and examine the case very carefully as it was conducted, including what arguments were made, and how he was injured by the judgment rendered against him and from which he appealed. If either of the parties should say that he had found new documents or witnesses which would be of greater assistance to him in his case, and which he could not produce before the other judge, he should receive the appeal. Where he finds that the judgment was rendered justly he should affirm it, and condemn the party who appealed to pay the costs incurred by his opponent, according to the practice of our court; and send the parties before the first judge who decided between them to execute his judgment, or to proceed with the principal matter in controversy, when the appeal was taken on account of some oppression. Where he thinks that the appeal was properly taken, he should correct the judgment, and determine the principal question at issue, and not send the party back to the judge who rendered an improper decision. But in a case of this kind, when the first judgment is set aside, neither of the parties should pay the costs; and where the appeal is taken from some final judgment he should affirm or revoke it, as he thinks just, and make the disposition of the costs as above stated.

Moreover, we decree that where an appellate judge finds that anything in the suit has been concealed either by force or fraud; or by the order of the first judge; or that the case has been changed from the condition in which it should have been at the time when the appeal was taken, he should cause it to be remedied; and we also decree that where the party who considers himself injured by the judgment alleges and proves that he did not dare to take or prosecute an appeal through fear of being wounded, killed, or imprisoned, the judge shall hear him, and decide the case as he thinks right, just as if an appeal had been taken.

LAW XXVIII.

An Appellate Judge Can Proceed with a Case, or Not, if Either of the Parties Dies Before He Renders His Decision.

Where one of the parties dies after he has taken an appeal from the decision of the first judge, and the case in which he appealed is of such a nature as to involve the death of a man, or loss of limb, or banishment, if the decision was rendered against the person of the party who appealed and not specially against his property; the appeal is terminated and the case ended by the death of the party who dies under such circumstances, whether he be the accused or the accuser, so that the appellate judge cannot proceed with the case. But where the sentence was pronounced against the person of the accused and against his property, although the case is terminated, so far as his person is concerned, it is nevertheless not ended with respect to his property, for his heirs are bound to prosecute the appeal if they desire to inherit his estate. We also decree that the heirs of an accuser can prosecute an appeal in an instance of this kind where the property of the accused is involved, if they desire to do so, and the accuser should die. And

for the reason that heirs are not so familiar with the conduct of suits as those from whom they inherit, we order that, in a case like this, they shall have four months time within which to prosecute an appeal, in addition to the time which the deceased was entitled to within which to prosecute it.

LAW XXIX.

How an Appellate Judge Should Act When the Property, Concerning Which an Appeal Was Taken, Dies.

If the object concerning which a decision was rendered dies after an appeal has been taken, and is of such a nature that, although dead, it can be sold, so that it is worth a little less than if it were living, as for instance, an ox, a cow, or something of this description whose flesh and hide can be sold; then there is no reason for the appellate judge to fail to proceed with the case just as if the animal were living. But where the property is of such a character that when dead not the whole of it but only a part of very little value, can be disposed of by sale, or in any other way; as, for instance, in the case of a horse or a mule, or other property of this kind, or where it is a slave who is of no value after he is dead, in any of the instances aforesaid, or in any other similar to them, an appeal should not be prosecuted concerning the property when dead, but only with respect to the amount which it might have been worth while it was living; so that if the party against whom the decision was rendered and who had possession of it, was guilty of bad faith by holding it; as, for instance, if he had secured it by theft or robbery, or obtained it from a man whom he knew had no right to it, or ought to have returned it to someone to whom it belonged and held it after the time was elapsed; where an appellate court affirmed a decision of the first judge rendered against said party, we consider it proper, and we order, that the party who held it shall pay as much as said property was worth while living, and also any rents or profits which the owner could have obtained from the same, if he had had it in his possession. Where, however, he kept possession of it in good faith and had a lawful reason for defending it, then the appeal is terminated by the death of the animal if it happened by accident or without his fault, and he should not be required to pay its value. Hence we decree that the party who had possession of the property acted in good faith in defending it, in case he obtained it by purchase, by gift, or by exchange from anyone whom he believed to be its owner, or it passed to him by inheritance, or in any other lawful manner.

TITLE XXIV.

Judgments Can Be Reversed and Reheard, When the King Desires to Show Either of the Parties Grace, Although He May Not Have Appealed from Them.

Mercy and justice are two great qualities which every man and especially kings and great lords should possess, making use of each of them as is proper. And since in the preceding Title we spoke of appeals which should be decided according to justice and law, we intend to mention here the grace which men ask of kings in judgments rendered against them from which no one can appeal, and with respect to other things which men cannot, or should not have, except where they ask grace of their lords; therefore we intend to explain what grace is; in what way it is beneficial; who those are who can ask it; and how and of whom; with regard to what matters they can do so; and at what times they should, and can, ask it.

LAW I.

What Grace Is, and What Benefit Is Derived from It.

Grace is the moderation of the harshness of justice, and great benefit is derived from it, for it moves kings to pity towards those who have need of it, and who ask it at the time and the season when they should.

LAW II.

Who Those Are Who Can Ask Grace.

Every free man can petition for grace, but it is not proper for slaves to appear before the king to ask it, except for the purpose of avenging the death of their lord, or for the reason stated in the Title concerning Plaintiffs, on account of which slaves can appear in court. Moreover, the people can ask grace of the king to relieve them of oppression suffered at the hands of his officers, and to remove the latter from their offices, punish them, and appoint others in their stead.

LAW III.

In What Way, and of Whom, Grace Should Be Asked.

Those who have need of grace should beg it of the king humbly upon their knees, and in few words. If they present a petition concerning any matter of this kind, they should use such language as is to the point, in order that kings and other great lords, who are compelled to attend to much important business, may not be delayed, by hearing protracted statements, or reading long documents.

LAW IV.

In What Matters Grace May Be Asked For.

One of the matters in which men can especially ask grace of the king is when cases are decided by him, or by the chief *adelantado* of his court, from whom no appeal can be taken, and the parties request that they may be heard a second time concerning said decisions and that the king change them for the better, if he finds any reason to do so. This, however, is understood to refer to a decision rendered by the king or the *adelantado*, he being familiar with the case, in the first place, because of its having been begun before him. For where a case was decided, by the judge of any city or town, and an appeal was taken from him to the chief

adelantado of the province, and the first judgment was affirmed, and the party appealed a second time from this judgment to the Court of the King, and the king or the chief *adelantado* affirmed the aforesaid judgments; from that time forward the party cannot ask grace of the king to hear that suit again, except where the king desires to show him grace as his lord. Moreover, men can ask grace for the purpose of extending the time for payment of debts which they owe, but they cannot do this in order to be entirely released from a debt, nor can they ask grace of the king where anything which may be injurious to him or to the kingdom is concerned; and if the king should grant it, such an act of grace will not be valid, except where he grants it a second time. Moreover, grace should not be asked of the king to obtain the pardon of a man convicted of treason or perfidy.

LAW V.

Grace Cannot Be Asked with Respect to a Decision Rendered Against Anyone from Which He Could Have Appealed, but Was Unwilling to Do So.

When a final judgment has been rendered against anyone over twenty-five years of age, by such a judge as the party can appeal from if he desires to do so, and he does not appeal from said judgment within the appointed time; even though thereafter he appears and asks grace of the king to order the suit to be heard a second time, he should not be heard, nor should his request be granted; for, since he could have appealed and did not attempt to do so, it would appear that he was content with the decision which had been given against him. We also declare that if men knew they would be heard under circumstances of this kind, they would always exert themselves to petition for grace that they might be heard, and cases would never be terminated or completed.

LAW VI.

At What Times Grace Can, and Should Be, Asked.

Within ten days after a decision has been rendered by the king or by the chief *adelantado* of the court, the party who considers himself injured can ask as grace that he may be heard concerning the decision. Then, if this favor is granted him, the king or the *adelantado* can order the judgment to be carried into execution where it relates to personal or real property; the successful party giving sureties to return everything delivered to him, if the king should consider it just to reverse the judgment rendered in his favor; and if he does not determine to ask grace within the time aforesaid, he can still do so within two years. In a case of this kind, however, the judgment should be enforced, and the party in whose favor it is rendered will not have any reason to give sureties as we have above stated. And, above all, we decree that the *adelantado* or the king, who grants this act of grace, should himself hear the suit from the beginning, in order that he may the better ascertain if the decision can be remedied.

TITLE XXV.

How Judgments Which Have Been Rendered Against Persons Under Twenty-five Years of Age, or Against Their Guardians Can Be Annulled, Although Appeals May Not Have Been Taken from Them.

The wise men of the ancients who established the laws, made a great distinction between taking an appeal from decisions, and petitioning kings for grace concerning them, or asking that a judgment rendered against minors should be entirely reheard, although no appeal was taken from it. For they declared that the party who appeals does so for the reason that he considers that he was wronged by the judgment rendered against him; but the party who asks for grace concerning any judgment, does not complain of any wrong, but wishes to state that, while it is good, it can be made still better. The other party who makes a demand in behalf of minors, for delivery, against some judgment, has no complaint against the court that rendered it, but asks to be heard again, because those who presented his case did not do so thoroughly; or, for the reason that, in making their statements, they erred by confessing or denying what they should not have done.

Since in the preceding Titles we treated of appeals and of the grace which a man can ask of lords with regard to judgments; we desire to explain here in what way decisions rendered against minors can be annulled by delivery, which is called *restitutio*, in Latin. Wherefore we desire to show here what restitution means; what benefit is derived from it; who can ask it; in what way this can be done; of what judges it can be asked; and of whom, when, and for what reasons this can be done.

LAW I.

What Restitution Means, and What Benefit Is Derived from It When It Is Granted in Order to Annul a Judgment.

Restitutio, in Latin, means, in Castilian, to place matters in the same condition in which they were before judgment was rendered concerning them. Great advantage arises from this; for judgments rendered against minors are annulled by this means, although appeals may not have been taken from them; and their guardians and advocates can argue their cases as at first, and remedy the mistake made in the suits in which the judgments were rendered. They can do this not only in cases decided against minors, when their guardians were present, but also in others which their guardians have conducted in their names, even though the said minors were not present. Where, however, minors begin a suit of themselves and judgment is rendered against them, their guardians not being present, a decision rendered to their prejudice will not be valid; and therefore it would not be necessary to set it aside by restitution, for the reason that a suit of this kind, together with all the proceedings, is utterly invalid, just as if nothing had been done from the beginning.

LAW II.

Who Can Demand Restitution, in What Way, and in What Judgments.

Guardians can demand the restitution of property to its former condition from which it was changed by a judgment rendered against minors, or against themselves or guardians, they themselves being present; and their attorney can do the same thing if he has a special order for that purpose. The demand should be made in the following manner. Their opponent, or the party from whom restitution is demanded, having been summoned, should be present when restitution is granted to a minor, or his guardian, or his attorney concerning any property involved

in the suit, or with respect to the entire judgment, and they should act in this way, and permit their opponent to be heard and place the suit in the same condition in which it formerly was; as it is but just and proper, since the minor is not content with the judgment, that the arguments of his opponents be reheard from the beginning, just as his are to be heard.

Moreover, we decree that so long as the suit for restitution lasts, no new matters shall be introduced into it; and we also decree that minors can demand restitution with regard to judgments of this kind rendered against them or their guardians, so long as they are under age. Although the action should have been commenced at a time when they were minors, if the judgment was rendered afterwards when they had attained their majority, then it cannot be set aside for the purpose of restitution, though they have a right to appeal from it, if they desire.

LAW III.

Before What Judge Restitution Can Be Asked.

The demand to set aside a judgment, rendered against minors by way of restitution, can be made before the same judge who rendered it, or before his superior in rank; and minors can demand said restitution during the whole period of their minority, which is until they have fully attained the age of twenty-five years; and judges should grant it when minors show or prove that they were defrauded by the suit or by the judgment, or that a minor, either through negligence, or by mistake, confessed or denied something which resulted in his injury; or that their advocates did not state their arguments as fully as they should have done; or that they have certain documents or witnesses which they have recently discovered, by whose means they can improve their case; or that they desire to cite laws, fueros, or customs which are to their advantage and adverse to the judgment of which they complain. Where neither minors nor their guardians state reasons of this kind they cannot set aside judgments rendered against them.

TITLE XXVI.

How a Judgment Rendered on Account of Forged Documents, or False Evidence, or Contrary to Law, Can Be Reversed.

Not only in the three ways which we mentioned in the laws of preceding Titles can a judgment be annulled, but there is still another way, and this is when it was falsely rendered. And although in the Title concerning Crimes we shall treat in general of all the kinds of deceit which men commit, we desire to speak especially in this one of that for which judgments can be reversed, and explain what such deceit is; in what manner a judgment rendered on account of it can be annulled; and who can set aside such a judgment, and within what time this can be done. And, afterwards, we shall show how a judgment can be set aside which was rendered contrary to law, and to the regular method which should be observed in rendering it, concerning which we spoke in the First Partida, in the Title concerning Judgments.

LAW I.

What Deceit Is, or How a Judgment Rendered on Account of Forged Documents or Evidence Can Be Set Aside.

Deceit, as wise men have stated, is an alteration of the truth, for although deceit may have the appearance and aspect of veracity nevertheless, it is not that, but is very different from it. For this reason judges are sometimes imposed upon thinking that forged documents or false witnesses which parties produce before them are genuine, when they are not, and they render judgment on account of them. Therefore, we decree that every judgment based upon forged documents or false witnesses may be set aside, even though the party against whom it is rendered does not appeal from it. A judgment of this kind can be set aside in the following way; where the party who considers himself injured appears before the court—the other in whose favor the judgment was rendered being present, having been summoned—and makes the application petitioning the judge, by way of restitution, to set aside said judgment, because it was based upon the testimony of false witnesses, or upon forged documents, and where he proves this the judge should reverse it. But if, in the case in which judgment was rendered, many witnesses have been heard or documents of many kinds have been introduced for purposes of evidence, although the party may prove that some of these witnesses or documents are false, it will not be sufficient, unless he establishes conclusively that the judge based his decision upon the testimony of said witnesses, or upon said forged documents.

LAW II.

The Same Judge Who Rendered a Judgment Based Upon False Testimony Can Set It Aside.

The same judge who based his decision upon the evidence of false witnesses, or upon forged documents, can himself set it aside, or some other judge who is his superior in rank can do so, if the parties ask this of him, and can prove their allegations in the manner stated in the preceding law. A judgment of this kind along with everything done with regard to it, or paid out on account of it can be set aside within twenty years from the time it was rendered, but from that time forward it must forever stand.

LAW III.**How a Decision Rendered Contrary to Law, or Contrary to a Fuero, Can Be Set Aside.**

A judgment rendered contrary to law, or contrary to a fuero is not valid. This would be the case where something plainly contrary to law is written in a decision, as if it should be said: "I order that such-and-such a will, made by So-and-So, under fourteen years of age, be valid;" or where some other special matter forbidden by law or fuero is inserted in a decision. For a judgment of this kind, although an appeal may not be taken from it, is not valid; nor should it operate for the benefit of the party any more than if it had not been rendered. We decree that the same rule shall apply where a judgment is rendered contrary to nature, or contrary to good customs, or where something is ordered by it which cannot be done.

LAW IV.**In How Many Ways a Decision Becomes Void.**

A decision rendered when all the judges who were appointed to decide a case are not present, is void. This rule also applies when a certain time was granted them within which to give their decision, and they give it after the period has elapsed during which their authority was conferred upon them. Moreover, when any man is ordered, by a sentence for some offense which he has committed to pay a larger sum than the law orders to be paid, the excess of said amount called for by the judgment shall not be valid. We decree that the same rule shall apply when a manifest error was inserted in a decision with reference to the number of maravedis, or the amount of the costs which the party was ordered to pay or give; for although no appeal may be taken from the judgments aforesaid, they can be reversed at any time, and they should not operate for the benefit of the parties any more than if they had not been rendered.

LAW V.**A Decision Is Void If It Is Rendered Before an Answer Has Been Filed and the Other Party Is Not Present.**

Judges should not render a decision in any suit except in an appeal, unless it has been begun in the first place by complaint and answer; otherwise the judgment which they render subsequently will not be valid. This is also the case where they render a decision when the parties are not present, or when they have not summoned them to appear and hear their decision; or where it is proved that they rendered said decision in consideration of money; or condemned a man when he was dead, except in case of treason. For in any of these cases, or in the others which we stated in the laws of the Title concerning Judgments which are not valid, a decision rendered will be void, and can be set aside, even though no appeal is taken from it.

TITLE XXVII.

How Valid Judgments Can Be Carried Into Effect and Who Can Do This.

It has been shown fully in the other preceding Titles how, and in what way, judgments can be rendered, and for what reasons they can be set aside afterwards; and now we intend to explain here, how valid judgments which cannot, and should not be annulled for any of the reasons we have given in preceding laws, can be carried into effect. We shall state, in the first place, who has authority to execute them, and in what way, and against whom, and in what matters, and, also, at what times he can do so.

LAW I.

What Judges Can Execute Judgments Which Have Been Lawfully Rendered.

The same judges who rendered judgments which are valid can execute them, and their superiors in rank can also do this. Moreover, we decree that where a judgment has been rendered in one place, and the property in question is situated in another, the judge in whose district the property is, should cause the judgment to be executed by delivering the said property to the successful party, after he has received a letter with reference to the decision from the judge who rendered it. We decree that the same rule shall be observed when a judge renders a decision relating to a debt which some one owed, whose property is situated in another district, and not in the one in which the decision was rendered. Not only can judges, of themselves, execute judgments which are valid, but they can also cause this to be done by their officers appointed for this purpose, or by the justice or *merino* of the district whom they order to do so.

LAW II.

How Valid Judgments Should Be Executed.

Valid judgments should be executed in the following manner. Those who order this to be done should carefully consider whether the defeated party himself admitted the debt, or whether it was proved so that he cannot dispute it; and this should be done quietly without annoyance, and with the use of courteous words, by delivering to the party who was successful against the defendant, or to his heirs, a sufficient sum of money, or the property which was especially included in the judgment; and if the parties against whom the judgment was rendered should prove disobedient and oppose said delivery by attempting to resist it by violence, the judges should then assemble armed men, and accompany them to the place, and cause their judgment to be forcibly executed, so that justice may prevail.

LAW III.

What Property Should Be Taken in Execution in the Enforcement of a Judgment.

A judgment should be executed upon, and delivery made of the goods and chattels of the principal party to the suit against whom judgment was rendered, by taking as much movable property as will be sufficient to pay the amount of the debt included in the judgment, and if the movable property should not be sufficient, enough of the immovables should be taken to make up the deficiency; and when all this is not sufficient to complete the delivery, there should be surrendered to the successful party enough of the undisputed debts owing to the party who lost the suit to make up the amount mentioned in the decree; but there should not be delivered, on account of the debt for which judgment was rendered, either

the horses or arms of a knight, or his pay, or land allotted for his support, or oxen used for husbandry, no matter whose they are, where other property belonging to the defeated party can be found out of which the judgment can be satisfied. And if, while enforcing the judgment, concerning the property to be taken with which to make the delivery, a dispute should arise through certain persons stating that said property was theirs, or that they had some right in it and that it did not belong to the party against whom the judgment was rendered, the judge should then quietly ascertain the truth and whether it corresponds with their statements; and if he finds that this is the case he should relinquish the property, and enforce the judgment by taking other property belonging to the defeated party concerning which he finds no dispute exists. All the matters which we have mentioned up to this point in the present law, have reference to judgments rendered on account of a debt owed by the defeated party, or because of some act which he was required to perform; but when a judgment is rendered concerning some special piece of property whether it be personal or real, which a man claims as his own, then the judgment should be enforced by taking the aforesaid property, no matter of what nature it may be.

LAW IV.

How a Judgment Against Several Persons Concerning a Piece of Property, Should Be Enforced.

It happens sometimes that a decision is rendered against several persons concerning something which they should pay or do, and ordering them to pay the amount, or to perform the act. For this reason we decree that where a judge who renders a decision of this kind does so against each one of them for the whole amount, the decision can be enforced by taking the property of every one of them. Where it was not rendered absolutely, making each of them responsible for the whole, then we decree that it must be enforced by taking the property of all of them together, each one of them paying so much; and that no one of them can be compelled to pay it all when the decision has been rendered in this manner, although each may have rendered himself liable for the whole amount at the time when they became sureties together.

LAW V.

Within What Time a Judgment Rendered Against Anyone Should Be Enforced.

Where a judgment is valid and can be enforced because no appeal was taken from it, or, if it was taken, because it was affirmed so that there could be no further appeal; and said judgment was rendered for a debt which the defendant confessed, or if he lost his case before a judge, his property should be levied upon within ten days. Where the judgment was rendered with regard to any specified property which a man claimed as his own, then it should be enforced at once, by taking said property concerning which said judgment was rendered; and if the losing party declares that he cannot surrender it immediately because it is somewhere else, and he does not make this statement maliciously; he should give good sureties that he will deliver said property, or the value at which it may be appraised, if he cannot obtain it, at some future time which the judge may deem proper.

Where a decision is rendered against a defendant by reason of some act which he ought to perform, he should be compelled to perform it as was agreed upon, or, as he promised; and where sentence is pronounced in a case involving punishment by death, or loss of limb, then it should be executed, openly by day in the presence of men, and not stealthily at night; for a sentence should not only be

executed upon men for the offences which they commit, but also in order that those who witness it may suffer fear and take warning, and avoid doing something for which they may deserve to receive similar punishment.

LAW VI.

In What Way Property Taken from Anyone on Account of Delivery, or as the Result of a Judgment, Should Be Sold.

Where a man is entitled to the delivery of the property of his debtor by the decision of a judge, and the debtor does not pay what he ought, the creditor can put the property delivered to him up at auction with the consent of the court and sell it within twenty days; and he should sell it to whoever will give the most for it within twenty days more. Where the property is worth more than the amount of the debt which he was entitled to receive, the excess should be given to the owner of said property; if it is worth less, the judge should deliver enough of the property of the losing party to make up the deficiency. If, within the twenty days aforesaid no purchasers should appear to buy the property, through fear, or through attachment to the losing party, or for any other reason; the judge should then transfer it to the creditor, by way of purchase, for as much as he thinks said property is worth.

TITLE XXVIII.

Concerning the Property Over Which a Man Can Exercise Ownership, and How He Can Obtain This.

A man obtains or loses the ownership of property not only by the decisions of judges, of which we have spoken in the preceding Title, but also in many other ways, which we shall show in the laws of this Title. For this reason we desire to explain here what such ownership is ; how many kinds there are ; and over what property a man can obtain it, and over what he cannot.

LAW I.

What Ownership Is, and How Many Kinds There Are.

Ownership is the power which a man has over his own property to do with it, and in it whatever he desires to do, without violation of the law of God or those of the country. There are three kinds of ownership. One is the supreme authority which emperors and kings possess to punish malefactors, and to accord his rights to every one in their dominions, and of this we treat with sufficient explicitness in the Second Partida, and in many laws of the Fourth Partida of this book. The second kind of ownership is the power which a man has over his movable or immovable property in this world, during his lifetime, and which after his death passes to his heirs, or to whomsoever he may transfer it while he lives. The third kind of ownership is the control of which a man has over the rents and profits of certain property during his lifetime, or at a stated period, or over a castle or lands which he holds as a fief ; as stated in the laws of this our book which treat of this subject.

LAW II.

In This World a Distinction Exists as to Property, Some of It Belongs to All Creatures, and Some of It Does Not.

There is a great distinction in the things of this world. For some belong to birds and beasts and all other living creatures, as well as men, to make use of ; and some belong to human beings ; and some belong wholly in common to some city, town, castle, or other place where men reside ; there are some which belong exclusively to every man who can obtain or lose their ownership ; and there are others who do not belong to any one and cannot be included in his possessions, as we shall show hereafter.

LAW III.

What Those Things Are Which Belong in Common to All Creatures.

The things which belong in common to the creatures of this world are the following, namely ; the air, the rain-water, and the sea and its shores, for every living creature can use each of these things, according as it has need of them. For this reason every man can use the sea and its shore for fishing or for navigation, and for doing everything there which he thinks may be to his advantage. If, however, a house, or any other edifice whatsoever, is found upon the sea shore, it should not be torn down or used in any way without the permission of the party who built it, or to whom it belongs ; although if the sea or any person should demolish it, or it should fall down, anyone whosoever can erect a new edifice in that same place.

LAW IV.**What Things a Man Can Do on the Sea Shore.**

Every man can build a house or a hut on the sea shore which he can use whenever he wishes; and any person can erect there another edifice for his own benefit, provided the common custom of the people is not violated; and he can construct galleys and any other kind of ships and dry nets there and make new ones if he desires to do so; and so long as he is working there or is present no one else should molest him so that he cannot use and be benefited by all these things, and by others like them, in the manner aforesaid; and all that ground is designated the shore of the sea which is covered with the water of the latter at high tide during the whole year, whether in winter or in summer.

LAW V.**How He Finds Gold, Pearls, or Precious Stones on the Sea Shore, Obtains Ownership of Them.**

Men find gold, pearls, and precious stones in the sand of the sea shore. For this reason we decree that where a man finds any of the things aforesaid and is the first to take possession of them, they shall belong to him. For, as whatever is found in a place of this kind is not part of the property of any individual, it is but proper and right that it should belong to him who first discovers it or takes possession of it, and that no one else should dispute this, or place any impediments in his way.

LAW VI.**Every Man Has a Right to Make Use of Harbors, Rivers, and Highways.**

Rivers, harbors, and public highways belong to all persons in common, so that parties from foreign countries can make use of them, just as those who live or dwell in the country where they are situated. And although the banks of rivers are, so far as their ownership is concerned, the property of those whose lands include them, nevertheless, every man has a right to use them, by mooring his vessels to the trees, by repairing his ships and his sails upon them, and by landing his merchandise there; and fishermen have the right to deposit their fish and sell them, and dry their nets there, and to use said banks for every other purpose like these which appertain to the calling and the trade by which they live.

LAW VII.**Trees Which Grow Up on the Shores of Rivers Belong to Those Persons Whose Lands Are in Front of Them.**

All trees standing on the banks of rivers belong to those persons whose lands join said banks, and the persons who own said lands can cut down, or cause to be cut down such trees, and do with them whatever they like. Where, however, at the time when anyone was about to cut down a tree which was his property on account of being on his land, and any ship was moored to it; had just arrived and its crew desired to moor it to such a tree; said party should not fell it immediately, for the reason that he would act in violation of the common right which men have to use the shores of banks of rivers, as has been stated. But when no vessel is moored there and no man desires to moor one, the said person can cut it down whenever he wishes, and make use of it to his own advantage.

LAW VIII.**No Man Has a Right to Build a Mill, or Any Other Structure in a River, by Means of Which the Passage of Vessels May Be Obstructed.**

Neither a mill, nor a weir, nor a house, nor a tower, nor a hut, nor any other structure whatever can be erected by any man, in a river where men travel with their vessels, or upon the banks of the same, by means of which its common use may be interfered with; and where anyone does this for the first time, or where it has been done in former times, and injury to the common use of the stream results, the said structure should be demolished; for it is not proper that the general benefit of all persons should be interfered with, for the profit of a few.

LAW IX.**What Those Things Are Which Are the Common Property of Every City and Town, and Which Every One Has a Right to Use.**

The fountains and squares where fairs and markets are held, the places where councils meet, the sandy beaches on the banks of rivers, the commons and roads traversed by horses, mountains and pastures, and all places similar to these established and granted for the common benefit of every city, town, castle, or other community, belong to the latter in common. For every man who is a resident of them can make use of all these aforesaid things, and they are the common property of all, of the poor as well as of the rich, but those who live elsewhere cannot use them against the will or prohibition of the residents of said places.

LAW X.**What Those Things Are That Are Included in the Common Property of a City or Town, and Which Everyone Has Not the Right to Use.**

Cities and towns can own fields, vineyards, gardens, olive groves and other lands, beasts, slaves, and similar chattels which yield rents and profits, and although these are the property of all the inhabitants of the city or town to which they belong, nevertheless, each one of them cannot separately and individually make use of things of this description; but the rents and profits that are derived from them should be set apart for the common benefit of the whole city or town which owns the property from which they are obtained as, for instance, for the repair of walls, bridges, and fortresses, or for the occupancy of castles, or for the payment of officials, and for other purposes of this kind, which are for the general advantage of the entire city or town.

LAW XI.**Over What Property Emperors and Kings Have Exclusive Ownership.**

The revenues of ports, the tolls paid by merchants on account of the property they remove from, or bring into the country; the income from salt-wells, fisheries, and works in iron and other metals, and the taxes and tributes paid by men, belong to emperors and kings; and all these things were granted them in order that they might have the means honorably to pay their expenses, protect their dominions and kingdoms, and wage war against the enemies of the faith, and that they might avoid imposing many pecuniary burdens upon their people, or oppressing them in other ways.

LAW XII.**No One Can Exercise Ownership Over Property Which Is Sacred or Holy.**

All property which is sacred, religious, or holy, and set apart for the service of God is not subject to the ownership of any man, nor can it be included in his possessions; and although priests may have control of it they do not own it, but hold it as guardians and servitors, and because it is their duty to protect such property, and to serve God in it and by means of it. For which reason it was permitted them to have sufficient from the revenues of the Church and its lands to live upon moderately, and to expend any surplus in charity because it belongs to God; as, for instance, to give food and clothing to the poor, to bring up orphans, to provide husbands for impoverished virgins in order to prevent them from becoming bad women through want, to ransom captives, to refurnish churches by purchasing chalices, vestments, books, and other things of which they are in need, and in other works of piety similar to these.

LAW XIII.**What Kinds of Property Are Sacred, and How They Can Be Alienated.**

We decree that sacred property is such as has been consecrated by bishops, as, for instance, churches and their altars, crosses, chalices, censers, vestments, books, and all other things set apart for the service of the Church; and the ownership of property of this kind cannot be transferred, except in particular instances, as we explained in the First Partida of this book in the laws which treat of this subject. Moreover, we decree that although any consecrated church may be demolished, the place where it stood shall always remain sacred. Where, however, a consecrated church falls into the hands of the enemies of the Faith, from the time they obtain possession of it and so long as they hold it, it shall not be sacred; but after Christians have recovered it, it shall be sacred, and shall be restored to the condition in which it was before the enemy obtained possession of it, and shall enjoy all its rights free and unencumbered, just as it formerly did.

LAW XIV.**A Place Where Any Man Is Buried Is Holy, Whether He Be a Slave or a Freeman.**

We decree that the place where a man is buried, whether he is free or a slave, is sacred, if he has been buried never to be removed, and if his entire body, or at least his head, is there; except where the party who has been interred was executed for some crime, or has been taken up from the place where he lay and been buried again without the order of the king; or where it is proved that he had committed treason against his lord, or against the country of which he was a native.

LAW XV.**The Walls and Gates of Cities Are Called Holy.**

The walls and gates of cities and towns are called holy. Wherefore emperors and philosophers established the law that no man should deface them by breaking or forcing them, or passing over them by means of ladders or otherwise, or under them in any manner, but should only go through them by means of gates; and they established as a penalty for those who violated this

law that they should lose their heads, because anyone who enters a city or town in this way, does not do so like a man who loves and honors the place, but like an enemy and a malefactor. Romulus, who was the lord of Rome, established this regulation.

LAW XVI.

How Romulus Settled Rome, and Forbade Anyone to Enter Either Over or Under the Walls of the City.

Remus and Romulus were two noble, distinguished, and powerful brothers, who originally settled Rome and surrounded it with walls, and after both of them together had founded it and encompassed it with walls, a controversy arose between them as to what the city should be called, and which one of them should be the lord of it, and they agreed to cast lots, and that the party who won should be the master of the city, and should give it whatever name he thought proper. The lot fell to Romulus, and he gave it the name of Rome, and established regulations and rules in accordance with which the people should live and support themselves. Among the rules which he established was one that no man should enter the city or leave it except by the gates and that whoever entered or left it elsewhere by means of a ladder or in any other way over the walls or under them, should lose his head in consequence; and therefore, because his own brother broke this rule, and left the city by scaling the walls he was decapitated.

Wherefore, said Lucan, the first walls of Rome were bathed in the blood of the brother of its lord.

LAW XVII.

A Man Obtains the Ownership of Wild Animals and Fish as Soon as He Takes Them.

Whoever takes wild beasts and birds, and fish from the sea and rivers, becomes their owner as soon as he has taken them, whether he obtains possession of them on his own land or on that of another. Moreover, when any man desires to enter upon the land of another for the purpose of hunting, and the owner of said land is present, and tells him that he shall not enter and hunt there; and, afterwards, contrary to his prohibition, he secures any game there, it shall not belong to the hunter but the owner of the property; for no man should enter upon the premises of another to hunt, or for any other purpose, against the prohibition of the owner. This would also be the case where the owner finds him hunting on his land and before he has taken anything forbids him to hunt there, for all he obtains on said land, after he has been forbidden to hunt will belong to the owner of said property, and not to the hunter. But if he had killed anything before he was forbidden, it should belong to the hunter, and the owner of the property has no claim to it.

LAW XVIII.

For What Reason One Man May Enter Upon the Land of Another.

A man may enter upon the land of another, against the prohibition of its owner, for any of the reasons stated in this law. First, where a man has trees yielding fruit and their branches overhang the land of another party so that the fruit falls there, he has then a right to enter and gather the fruit of his trees, and this he can do within three days, but not afterwards. Second, where a man has hidden money on the premises of another party; for, if he swears that he did not do this maliciously, the owner of said premises should give his

consent for him to enter and take what he concealed there, and should permit him to remove it without any hindrance. Third, where a man has purchased the grapes of some vineyard, or the fruit of the trees of some garden or other property, and has paid for them; he can then enter for the purpose of gathering the fruit which he purchased, and the owner of the property cannot forbid him to enter, although he may desire to.

LAW XIX.

How a Man Loses the Ownership Which He Has in Birds and Wild Animals.

Men lose the ownership which they have acquired in birds, wild animals, and in fish, in the way which we mentioned in the third law preceding this, just as soon as they leave their control and return to the condition in which they formerly were before they took them; and they also lose said ownership when the animals escape and go to such a distance that they cannot be seen; and even when they can be seen, if they are so far away that they can only be recovered again with difficulty. In all of these cases any person whosoever who first takes them becomes their owner.

LAW XX.

How Men Obtain the Ownership of Property Taken from the Enemies of the Faith.

Property of enemies of the Faith, with whom no truce or peace with the king exists, belongs to whoever obtains it, except it be a town or a castle, for, though any person may capture one of these, its ownership remains absolutely in the king by whose agency it was secured; but he should show distinguished honor and favor to the person who captured it. Moreover, we decree that whoever secures a captive in time of hostilities who is in the enemy's country and is waging war against Christians, shall be the owner of said captive, whether he be Christian or Moor; but as soon as he leaves the power of the party who took him, and returns to the enemy's country, he who captured or purchased him shall lose his ownership, and he shall for that reason be free.

LAW XXI.

To Whom a Deer Belongs Which Has Been Wounded by One Party and Taken by Another.

Hunters follow a wounded deer, and other parties come and take it, and for the reason that a controversy may arise which of them would be entitled to a deer under such circumstances, we decree that it shall belong to those who first obtained possession of it; for although the others may have wounded it, it was not yet in their power, and many things might happen which would prevent their ever securing it. We decree that the same rule shall apply where anyone has set snares, or traps, or dug pits, or prepared any other means for the capture of game; for whoever comes first, finds it, and takes possession of it, shall be its owner, and this is according to justice, although in some localities the contrary opinion prevails.

LAW XXII.

How the Ownership of Bees, Swarms, and Honeycombs Is Obtained.

Bees are the same as wild creatures. For which reason we decree that where a swarm of them settles down upon any man's tree he cannot say that they are his until he encloses them in a hive or in something else, any more than he can say that the birds who light there are his until he takes them. We decree that the same rule shall apply to honeycombs which bees make in any-one's tree, for he cannot consider them as his so long as they are there, until they are taken and carried away; for if some one else should happen to come and remove them they will belong to him, except where the party is present when the attempt is made to remove them, and he forbids it. Moreover, we decree that if a swarm of bees leaves the hive of any person, and takes to flight, and their owner loses sight of them; or they go to such a distance, that he cannot recover, or follow them, he, for this reason, loses the ownership of them, and that whoever first takes them and shuts them up obtains it.

LAW XXIII.

How a Man Loses the Ownership of Peacocks, Pheasants and Other Wild Birds.

Men are sometimes accustomed to tame and bring up at their homes peacocks, sparrow-hawks, India hens, doves, cranes, geese, pheasants, and other fowls of this kind which are wild by nature. For this reason we decree that so long as such birds have the habit of leaving and returning to the house of the person who reared them, he retains ownership over them wherever they may go; but, after they, of their own accord, have abandoned the habit of leaving and returning which they formerly had, he loses the ownership of them which he previously possessed, and whoever takes them obtains it. We decree that the same law shall apply to stags, fallow-deer, zebras and other wild animals which men are accustomed to rear at home; for as soon as they return to the forest, and abandon the habit of returning to the house of their owner, or the place where he kept them, he loses his ownership of them.¹

LAW XXIV.

A Man Does Not Lose His Ownership of Chickens and Capons.

Chickens, capons, and geese, which are brought up in the houses of men, are not of a wild nature. For this reason we decree that although, through fear or for some other cause they may fly away and leave the houses of those who reared them and not return, the party to whom they belong does not, for that reason, lose the ownership of them but we decree that whoever attempts to take them, with the intention of causing their owner to lose them, can be prosecuted for theft just as if he had stolen any other property which he had in his house.

¹ The law regulating the vesting of ownership in *ferae naturae* is substantially the same in all countries, being governed by actual possession and control of the animal in question. Bees are included in this class by the provisions of both the civil and the common law. "*Apium quoque natura fera est: itaque quae in arbore tua consederint, antequam a te alveo includantur, non magis tuae esse intelliguntur, quam volucres.*" (Corp. Jur. Civ. Inst. II-I-14.) By the law of England, also, they must be hived if lost sight of by the owner, before he can reclaim them, as is also provided by the *Partidas*. Under the Visigothic Code the mere marking of the tree or rock on which a swarm lighted was sufficient to transfer the ownership of the latter. "*Si quis apes in silva sua, aut in rupibus, vel in sazo, aut in arboribus, vel in qualicumque loco invenerit, faciat tres decurias, quae vocantur characteres; unde potius non per unum characterum fraus nascatur. Et si quis contra hoc fecerit, atque alienum signatum intruperit, duplum restituat illi cui fraus intata est, et praeterea XX flagella suscipiat.*" (For. Jud. VIII-VI-1.) The severe penalty of a fine of twice the value of the swarm and twenty lashes with the scourge, indicates the high estimation in which bees were held as property during the Gothic supremacy.—Ed.

LAW XXV.**Concerning Cows, Ewes, Mares, and She-Asses.**

We decree that the increase of cows, ewes, mares, she-asses, and other animals or beasts like them, which yield an increase, shall belong to those whose property the females are who produced the increase, and the owners of the males by which they were impregnated shall have no right to the increase of this kind; except where an established custom exists in the country, or some contract or agreement is made between the owners of the females and the males previously, for then the agreement entered into between them should be observed.

LAW XXVI.**To Whom the Alluvial Deposit Made by Rivers on Land Shall Belong.**

Rivers at times swell in such a way that they remove and deprive some persons of the land which they possess on their bank, and give it and add it to that of others who have property on the opposite side. For this reason we decree that everything that rivers take from men little by little, so that the amount of it cannot be ascertained because it is not all removed at once, shall belong to the owners of the land to which it is united, and that those from whom it is taken shall have no further interest in it. But when it happens that a river carries away a certain portion of land entirely, as, for instance, a part of it with its trees, or without them; the persons to whose premises it is joined are not entitled to the ownership of what was thus carried away, except where it was after so long a time that the trees have taken root in the land of the parties to which they were united. In this case the owner of the property where they took root shall become their owner, but he will be bound to make good to the other the loss which he suffered on this account, according to the judgment of reliable men well versed in agriculture.

LAW XXVII.**How Islands Made by Rivers Should Be Divided.**

Islands sometimes arise in rivers, and men dispute concerning their ownership. For which reason we decree that where an island happens to be in the middle of a river, those who own land on both sides shall divide it in the middle, each taking as much of the half of said island lying opposite his premises, as the breadth of said land which faces the river amounts to. Where it happens that the island is all in the half of the river on one side, those who have property on this side should divide it, as aforesaid. But where the island is not entirely situated on one side beyond the median line, nor in the centre, but the greater portion is more on one side than on the other, then a rope as long as the river is wide should be taken and the island measured, and after it has been measured according to the width of the river, so that it will neither be more nor less, the rope should be doubled, and a mark be placed where the half was found to be, and from that point or mark, which they made, the parties should divide the island between them, as above stated, each of them taking as much as he is entitled to, according to the boundary of his land.

LAW XXVIII.**If a River Makes an Island of a Person's Land, the Owner Does Not Lose It.**

Floods sometimes cause rivers to swell and encroach upon the lands of men, and cut through them so as to form islands out of them; and although we explained in the preceding law in what way islands which are made in rivers, should be divided, it is not to be understood, for all that, that an island of this kind should be divided in the same way, for no one has anything to do with it except the party on whose property it is made, and the ownership which he previously exercised over said property shall remain in him, and he shall not lose it on account of an occurrence of this kind.

LAW XXIX.**To Whom an Island Belongs Which Arises in the Sea.**

It happens occasionally that islands arise in the sea. When, however, an island arises there, we decree that it shall belong to whoever first settles it, and the party or parties who settle it should obey the lord in whose dominions the place where the island appeared is situated.

LAW XXX.**To Whom an Island Belongs Which Is Made on the Borders of Land Held by Some Person.**

It may happen that some man has, during his lifetime, the usufruct of certain land situated on the bank of a river, or holds land as a fief; and although we stated in the fourth law before this that an island made in a river should be divided between the parties who own property on its banks, as we have explained elsewhere; nevertheless, it should not be understood that the party who has the usufruct of the property situated on the bank, or he who holds said property as a fief, has any interest in said island, but that both the island and the usufruct of the same belong to the person who owns the land. But where it happens that the property is increased in size by means of the river, of which said property some man enjoys the usufruct, or which he holds as a fief, the party who holds the property for either of the reasons aforesaid, is entitled to the usufruct of that portion which has been joined to the land by river, just as he is to that of the other land to which this is united.

LAW XXXI.**Where a River Changes Its Course Who Should Be the Owner of the Land It Traverses.**

Rivers change their course from where they formerly ran and make new channels elsewhere, and those where they formerly ran become dry; and for the reason that disputes may arise concerning the ownership of the old channels, we decree that they shall belong to the parties with whose lands they are connected, each of them taking as much of the channel as the boundary of his land opposite the river amounts to. The other lands through which the river runs in its new course, are lost to those to whom they formerly belonged, so far as the channel of the river is concerned, and from that time forward, they begin to be of the same character as the former channel of the river, and become public just as the river is.¹

¹ These provisions relating to changes wrought by the shifting of the channels of rivers through the action of the water are adopted bodily from the civil law. (Corp. Jur. Civ. Inst. II-1-12-II-1-22. Dig. XLIII-XII-1.) By the common law an island which rises in a stream is the property of him to whom

LAW XXXII.

A Man Does Not Lose the Ownership of His Land Although It May Be Covered with Water.

The lands of men are sometimes covered with water caused by the inundations of rivers, so that they remain hidden for many days, and although their owners lose possession of them while they are under water, nevertheless, their ownership remains secure, for just as soon as they are uncovered and the water return to its bed, they can use them as they did formerly.

LAW XXXIII.

Where a Man Makes Wine Out of the Grapes of Another Party, or Oil Out of His Olives, Who Is the Owner of the Same.

Men sometimes make wine for themselves out of other people's grapes, or oil out of other people's olives; or they take away wheat or barley from the harvest of another; or fashion cups, vases and other articles out of the gold and silver of another person; or make pans, pitchers, or other vessels of brass, copper, or other metal belonging to some one else, acting in good faith, and thinking that what they make belongs to them. And for the reason that disputes may arise among men as to who is the owner of such property, and whether it belongs to the person who owned the material or to those who made the above-mentioned articles out of it, we decree that where said material from which these are made is of such a nature that it cannot be restored to its former condition, as, for instance, grapes, which, after the wine is extracted from them cannot be so restored, or olives from which oil has been pressed, or the ears from which the grain has been taken, the ownership of things of this kind and of others similar to them, when they cannot be restored to their original state shall vest in the parties who in good faith changed their condition, but they will be bound to pay the amount of their value to those who formerly owned them. But where property is of such a nature that it can be restored to its former condition, as, for instance, a vase, or any other article made of gold, silver, or any metal which can be melted, in a case of this kind, and in all others like it, the ownership still remains in him to whom it belongs, and is not lost on account of others having made something new out of it. He, however, who is guilty of bad faith in doing any of the above-mentioned things, knowing that the material which he uses is the property of another, loses his labor, and should not recover the expenses which he incurred.

LAW XXXIV.

Where a Man Mixes Gold or Some Other Metal of His Own with That of Another Party, to Whom It Should Belong.

Where a man melts gold, silver, or any other metal belonging to another person, or mixes it with some of his own, without the consent of him to whom it belongs forming it into a mass or into rods, the ownership of said metal still remains in the party to whom it belonged when it was melted in this way, or

the piscary belongs. (Bracton, Treat. II-2.) The true line in all these cases, as by our custom, is presumed to run in the center of the stream, unless specifically stated otherwise; the ownership subject, of course, to the public easement of traffic which applies to all highways. The law of riparian rights, as regards alluvial deposits, is practically the same in both Roman and English jurisprudence. Where the accretion is slow and gradual it becomes a part of the adjoining land, according to the maxim: "*De minimis non curat lex*;" but where a large tract of soil is abruptly removed, or the channel is suddenly altered to the injury of the owner, he is entitled to what the stream left elsewhere. By the law of Louisiana he must make his claim within a year, or before the other party takes possession. (Civ. Cod. of La. II-3 Art. 503.) Where a new island appears in the sea, by the civil law as well as the *Partidas*, it becomes the property of the first occupant; by the common law the title to it at once vests in the Crown. (Bracton, Treat. II-2).—Ed.

mixed with what belonged to the other, whether he who melted it did so in good or bad faith, and whether he did, or did not know whether it was the property of someone else, or was his own. But where two, three, or more men, agree together to melt or mix gold, silver or any other metal which they have; in this instance, that which is mixed together becomes the common property of all, and the ownership of the portion each added to that of the others remains in every one of them, according to the value or weight of the amount which he contributed to what was mixed or melted.

We decree that the same rule shall apply to all other property which is mingled together, that can be counted, weighed, or measured, or which men agree, by common consent to mix or to unite with that belonging to others. We also decree that this rule shall apply where the property of different persons is mixed together, without the consent of its owners, but accidentally; when it is of such a nature that what belongs to some of them cannot be separated from that belonging to the others; as, where the oil or wheat of one man, or any other property like this, is mixed with that belonging to another, and they are both of the same kind or of two kinds so that one cannot be separated from the other without great labor. But where property which was accidentally mixed is of such a nature, that one kind can be separated from the other; as, for instance, where gold belonging to one man is mixed with silver, tin, or lead belonging to another, in a case like this relating to metals which can be separated from one another by means of fire by melting them, or of other things of the same description, they do not become common property by being united, but we decree that the ownership of each man shall still remain in the property which was thus united to, or mixed with that belonging to others.¹

LAW XXXV.

When a Man Joins the Pedestal of a Vase, or Any Other Article of the Kind Belonging to Another Person to His Own, in What Way the Ownership of Said Article Is Gained, or Lost.

When a man joins the pedestal of a vase belonging to another person to one of his own, or the arm or other limb of a statue belonging to another to his own, if it is of gold or silver, and is soldered with lead; whether he acted in good or bad faith in attaching it to his own property, he does not, for that reason, obtain the ownership of the same, but he should give it to the person to whom it belongs, but where the metal used to solder it was the same that the portions of both vases which were made into one were composed of, and the party acted in good faith when he attached to his own property that of another, thinking that it was his; he then obtains the ownership of whatever he united to his own, but he will be required to pay the estimated value of said portion to the other party.

Where a man joins to a vase of another the pedestal of one belonging to himself, and acts in bad faith in doing so, he loses the ownership which he had in the pedestal of his vase, whether the solder was made of lead or of the same

¹ The civil law, the source from which these rules are derived, differs somewhat from the common law in fixing the ownership of personal property where an intermixture of the same belonging to two or more individuals has produced confusion, rendering separation and subsequent identification impossible. While the Roman Law gives it all to the party who was ignorant of, or did not consent to the act, but grants him as compensation a sum equal to the estimated value of said property, that of England deprives him of all recourse, as a provision against fraud. The former doctrine, in a modified form, is in force in Louisiana. "In all cases where the proprietor, whose materials have been employed unknown to him in making a thing of another kind, has a right to claim the property of that thing, he is at liberty to demand either that the materials be returned to him in the same species, quantity, weight, measure, and quality, or that their value be paid." Also, where an article is made by an artificer of another's materials much stress is laid upon the determination of what is the principal part of the finished article, the material or the labor, in order to ascertain who has the right to retain it after reimbursing the other party. (Civ. Cod. of La. II:2 Art. 513, 519, 523.) This comes under the broad and comprehensive regulation of the Civil Law; "*Accessorium sequitur principale*."—Ed.

metal as that of the parts which he united. This is the case for the reason that since he knew that the vase belonged to some one else and joined the pedestal of his own to it, we must presume that he intended to give it to the other party; but where he acted in good faith in attaching it, thinking that the vase, as well as the pedestal, belonged to himself, in this case the other does not obtain the ownership of the portion that was joined to his: but we decree that if he desires the pedestal to remain attached to the vase he must pay the estimated value of it to the other party to whom it belongs, and who joined it to his vase. If he does not wish to retain the pedestal he should restore it to its owner, and he will then not be required to pay its estimated value.

LAW XXXVI.

To Whom a Book Should Belong, When a Man Writes It on Parchment Belonging to Another Person.

Where a man writes a book of verse, or of any other kind whatsoever, on parchment belonging to another person, such a book should be the property of the owner of the parchment upon which it was written. If, however, the party who wrote it did so in good faith, thinking that the parchment was his own and that he had a right to do so, and the person to whom the parchment belongs wishes to have the book; he should pay the other party for the writing which he did in it a sum which learned men think he deserves on this account. But if he wrote it in bad faith, knowing that the parchment belonged to someone else, he will then lose the writing and will be bound to give the book to the party to whom the parchment belonged, except where he has written it for a fixed price, for then the party should give him as much for it as he promised.

LAW XXXVII.

Where a Man Paints Something on a Board Belonging to Another, to Whom Does the Board Belong.

Where a man paints a picture, or anything else whatever on a board or a beam belonging to another person, and does so in good faith, thinking that what he made the picture on was his own and that he could do this justly; in this case the painter obtains the ownership of the board or whatever he painted the picture on, and it will be his as well as his painting. He will, however, be bound to pay to the party who owned said board whatever it is worth; but if, in making the picture he acted in bad faith, knowing that what he used for it belonged to someone else, then he will lose the picture, and it will belong to the party to whom the article on which it was painted belonged; for it would seem that, since he knew that the board belonged to some one else, he intended to give what was painted upon it to the owner. We decree that the same rule shall apply where anyone sketches, or cuts a design for himself on stone or wood belonging to someone else, for, where he does this by order of the party who is the owner of the wood, the ownership of what was painted or carved in this way upon it becomes the property of the party who ordered this to be done. The latter should, however, pay him his price for the labor which he performed while painting or carving it.

LAW XXXVIII.**Who Is the Owner of a Building of Stone, or of Wood, Constructed by One of Materials Belonging to Another**

Where a man uses, in his house, or in any other building which he constructs, stone, brick, pillars, lumber or anything else of the kind which is the property of another; after any of these materials are put in place and worked up, they cannot be claimed by the party to whom they belong, and he who performed the labor obtains the ownership of said materials whether he acted in good or bad faith in using them for that purpose. The wise men of the ancients considered it proper that this rule should be observed for the sake of the good order and the dignity of cities and towns; that the edifices constructed there might not be demolished for a reason of this kind; but the party will be bound, to pay to the owner double the value of what the property was worth.

LAW XXXIX.**To Whom Belong the Profits of the Lands of a Party Who Loses His Case in Court.**

Men purchase or obtain a house, or a tract of land belonging to another party in good faith, thinking that it belongs to those who convey it, and that they have the right to do so; and it afterwards happens that the true owner of the property appears and brings suit for it, and recovers it by a judgment in court. In a case of this kind we decree that the ownership of the profits of the land which the party who lost it has received and disposed of, vested in him on account of the work and labor which he expended upon them before the suit was commenced by complaint and answer, and he is not bound to give them to the successful party although he surrenders the land to him; but such of the profits of said land as he has not disposed of, he is obliged to restore to the owner of the property, deducting in the first place the expenses which he may have incurred on their account.

Moreover, we decree that if the crops he received are of such a nature that they did not result from human labor, but were spontaneously yielded by the land; as, for instance, pears, apples, cherries, nuts or similar fruits which trees produce naturally of themselves and without the labor of man, such as these the party is bound to return along with the land unless he has disposed of them in good faith. If he was guilty of bad faith in buying the property, or in obtaining possession of it in any other way, knowing that it did not belong to the party who conveyed it; then, although he may have disposed of the profits which he received from said land, he will be bound to pay their value, always deducting the expenses that he incurred on their account.

LAW XL.**A Party Who Holds Property in Bad Faith and Loses It in Court, Must Return All Its Profits.**

Men obtain lands and other property in bad faith in two ways. First, when they steal said property, or take it by robbery, or enter upon it without any right, and such persons, when they are defeated in court, are bound to return the property together with the fruits which they took from it, and those also which the owner of the property might have obtained from the same. Second, when they procure land by purchase, or gift, or in any other lawful manner, knowing, however, that the parties from whom they receive it have no right to dispose of it. Persons of this kind are bound to return the land along with the fruits which they obtain from it if they are defeated in court; but they are not obliged to return

what the owner of said property might have obtained from the same if he had had possession of it, except in four cases; first, when a person sells said property in order to defraud parties to whom he is indebted, and the purchaser is cognizant of the fraud; second, where the property was transferred on account of force or fear; third, when anyone secretly purchases such property as the officer of our court is ordered to sell, contrary to the custom which should be observed in making such sales; fourth, when the property is obtained in violation of the laws of this book. Any one who comes into possession of land in either of these four ways is bound to return it with all the products which he took from it, and also with such as the owner of the property might have obtained.

LAW XLI.

A Man Is Entitled to Recover the Expenses Which He Incurred on Account of Property That He Purchased in Good Faith, When He Loses Said Property in Court.

Men purchase or acquire the lands of other parties in good faith, and after they have purchased them make improvements upon them, as, for instance, a tower, a house, or some other building; and where it is real estate they sometimes plant trees or vines, and perform other acts of this kind, as they would upon their own property; and afterwards the true owners come in, and by order of court obtain said property they have acquired in this way. And for the reason that a dispute may arise between men, as to whether those who made the improvements are entitled to recover them or not, we decree that before the said house and the land have been delivered, the party who is successful, as aforesaid, shall be bound to return to the other party all the expenses which he recently incurred with regard to it; for when a man obtains property in good faith, and improves it as if it were his own, it is but just that he should recover what he has expended in this way; but if he has received any crops, rents, or profits from said land, since he desires to recover the expenses aforesaid, he should deduct from them what he obtained or acquired from the property. But where the owner of the land, who obtains it by a decree in court, is so poor that he cannot pay the other party the expenses which he recently incurred, even though he may be willing to sell everything he has, we decree that in this case he shall not be bound to pay said expenses; but the party who has the right to recover them has also the right to take from the house or other property, whatever he placed there, or added to it, and remove the same, and dispose of it for his own benefit.

We consider it just, however, and we order that if the owner of the property is willing to give him as much for what he has a right to remove from it as he could receive for the same after it has been taken away, he will be bound to pay for it, and the other must not remove it. We decree that the same rule shall apply where a party who makes improvements on a house or on the land of another, acted in good faith when he obtained it, and before he began to make said improvements was guilty of bad faith, knowing that the person from whom he obtained the property, had no right to dispose of the same; for if the true owner should afterwards obtain possession by a judgment in court, the said party has no right to recover the expenses incurred, but he can remove whatever he placed in, or added to, said property, as above stated.

LAW XLII.**A Man Is Not Entitled to Recover the Expenses Incurred on Account of Property Which He Holds in Bad Faith.**

Any man whosoever that builds a house or puts in a crop on the land of another and is guilty of bad faith, knowing that he has no right to do so; and is afterwards defeated in court by the true owner of the property, loses whatever he built or sold, and it will belong to the party who owns the ground or land, and he cannot, and should not, recover the expenses which he incurred there by reason of said improvements. He has, however, a right to deduct the expenses incurred on account of the crops as long as he held the property, when he is required to return said crops or their value to the owner of said property.

LAW XLIII.**Where Man Plants Trees or Vines on the Premises of Another, in Bad Faith, What Punishment He Should Receive.**

Where a man plants trees or vines on the land of another, and does so knowingly and in bad faith, and as soon as the said trees or vines take root or begin to grow, or are cultivated on the land, the party loses the ownership of what he planted there. We decree that the same rule shall apply where anyone plants the trees of another person or shoots from the vines of another on his own land, for as soon as they have taken root they will belong to the owner of the property, whether the party who planted them did so in good or bad faith; the said owner will, however, be bound to pay their estimated value to the party to whom they belonged.

Moreover, we decree that where any one plants a tree on his own premises and, after it has been planted, its roots extend over into the land of some other party near where it was planted, in such a way that the principal ones by which it is nourished are all in the land of said other party, the latter will be entitled to the ownership of said tree, even though its branches may overhang the property of the person who planted it. Where, however, a portion of the principal roots of said tree are in the land of the party who planted it, and the remainder in that of the other party who owns the adjoining land, then said tree shall be the common property of both of them.

LAW XLIV.**What Expenses of Those Which a Man Incurs on Account of the House or the Land of Another Person He Is Entitled to Recover, and What He Is Not.**

Men expend money on the houses and lands of others of which they have possession, not by erecting any new structure there, but by remodeling and repairing buildings whenever it is necessary, or by doing other things which are beneficial to the house or land. In a case of this kind we decree that the party who makes the expenditures which are necessary to be made, can and shall recover them while he has possession of the house or land in which he made them, whether he held possession of said property in good or bad faith; and although the owner of said house or land may acquire it by a judgment in court, he should not be given possession, until he has reimbursed the party for his expenses on account of the same. Where, however, he obtained any rents or profits from the house or land while he held it, we consider it just that he deduct his expenses from them; for it is proper that, since he desires to recover the expenses incurred in this way, he should take them out of said rents or profits.

We also decree that where a party made expenditures beneficial to the land or the house of another of which he had possession, and did so in good faith, thinking he was improving what belonged to himself, he is entitled to recover said expenses, even though it was not necessary for him to make said expenditures; but if he acted in bad faith, knowing that said land or house belonged to some one else, and the owner who obtained said property by a judgment in court is not willing to pay said expenses, the other party has a right to take away the improvements which he made. We also decree, that where those who are occupants of the houses or lands of others incur expense on their account, and the improvements are not very beneficial but are merely for the adornment of said property; as, for instance, paintings made in the houses, or pipes placed for the purpose of conducting water, and things of this kind which are more for the pleasure to be derived from them, than for any actual benefit, and the party in possession acted in good faith, thinking that the property was his own, he can then detach whatever he made, and take it away. Where, however, the party who owns the house or the land is willing to pay as much for said improvements as they would be worth after they are removed he should do so; but where he who makes expenditures for things of this kind acted in bad faith while in possession of said house or land, he shall lose all that he added to it, and cannot remove anything.

LAW XLV.

To Whom a Treasure Belongs Which Is Found by a Man on His Own Land, or on That of Someone Else.

Men sometimes find a treasure in their houses or on their land, either accidentally or while searching for it; and for the reason that a doubt may arise as to its ownership, we decree that if said treasure is of such a nature that it cannot be ascertained who placed it there, or to whom it belongs, the party who found it in his house or on his land is absolutely entitled to it, except when it is found by means of enchantment, and in that case all of it should belong to the king. But when someone has hidden it there, and can prove or establish that it is his, in that case the party who found it on his property is not entitled to it.

Where anyone happens to find such a treasure in the house or on the land of another, while working there or under any other circumstances whatsoever, and does so by accident, and not knowingly searching for it; half of it will then be his, and the other half will belong to the owner of the house or property where it was found; but where a party finds such a treasure by carefully searching for it and not through an accident of fortune, all of it will belong to the owner of the property, and the party who found it has no right whatever to it. We decree that the same rule shall apply where a treasure is found in a house or on land belonging to the king, or to any common council.¹

¹ The title to treasure trove, by the civil law, ordinarily vested in the finder, which was originally the rule in England. Subsequently, however, the revenue from this source, in the early days of the monarchy, became so considerable and important that all unclaimed treasure that had been buried, where the owner was unknown, was declared to belong to the crown. It was essential that it be concealed in the earth, for if found upon its surface the finder was entitled to it, the distinction being founded on the presumption of voluntary abandonment by which it became the property of the first comer. The law of Louisiana; which coincides with that of the *Partidas*, likewise only gives half of what is found to the usufructuary, who must discover it himself undesignedly. (Civ. Cod. Of La. III-1, Art. 546. XXIII-1, Art. 3386.) The rule is the same in France. (Cod. Civ. III, Art. 716.)

LAW XLVI.**The Ownership of Property Which Is Sold Does Not Pass to the Party Who Is Given Possession of the Same Until He Has Paid for It.**

Men obtain possession of the property of others through sales, or gifts by way of dowry, or in other ways, or by exchange, or for some other lawful reason; wherefore we decree that the ownership of property passes to the party who obtains possession of it by grants of this kind made by one man to another or by his order. If, however, the party who sold his property to another gives him possession of it, and the purchaser has not paid the price, or given a surety or pledges, or appointed a time for payment, the mere giving possession in this way does not transfer the ownership of the property until the price has been paid. But if the party has given a surety or pledges, or appointed a time for payment, or where the vendor trusts the purchaser for the price, then the ownership of said property shall vest in him by the mere act of giving possession, and even though the price has not been paid, he is, nevertheless, bound to pay it.

LAW XLVII.**A Man Obtains the Ownership of Property Which He Has Rented, If He Afterwards Purchases It from the Same Person from Whom He Rented It.**

Where a man who has hired or loaned his property to some one or given him charge of it, afterwards sells or transfers said property to him, although it may not have been there at the time, and he did not place him in possession of it; nevertheless, the party to whom he sells or gives it, becomes its owner. Moreover, we decree that in all these cases by which the possession of property passes from one person to another—though he may not actually be given possession of it, as stated in the Title which treats of the way in which a man can obtain or lose possession—for these reasons, or in these ways, the ownership of the same is transferred to those to whom it is sold, or with whom it is exchanged, or to whom it is given as a dowry, or otherwise, or where they are entitled to it for any other lawful reason, even if said property was not actually placed in their possession.

We also decree that when men form partnerships with one another, by agreeing that all the property which they have now, or may afterwards acquire, shall belong in common to all the partners; and as soon as such a partnership has been formed, concluded, and agreed upon among them, the ownership of all the property which each of them has passes to the others, just as if some of them had placed the others actually in possession of everything which they owned.

Where, however, some of the partners were, before the partnership was formed, entitled to receive certain debts or payments which belonged to them, the others cannot claim these without their permission or order, nevertheless, the parties are bound to grant them authority to demand the same, and whatever they obtain from this source should be the common property of all. Moreover, we decree that the ownership of all the profit that any of them makes vests in the others, just as if each one of them had made it himself.

LAW XLVIII.**How the Ownership of Property Which Emperors and Kings Order to Be Thrown Into the Streets, When They Are Crowned or Knighted, Is Obtained.**

When emperors or kings are crowned, or are made knights, great numbers of people assemble to do them honor, and their chamberlains are accustomed to throw gold and silver money or other valuables along the streets. There are two reasons for this. First, on account of their dignity and their joy; second, that they may be able to pass more easily through the masses of people; for when men see gold, silver, and jewels thrown about, they run to pick them up, and the streets through which the sovereigns are to pass become less crowded. Wherefore we decree that whoever picks up gold, silver, or any other valuables thrown in this way into the streets, obtains the ownership of whatever he picks; for it is with this understanding that the king commands these things to be cast into the streets in order that they may become the property of every one who finds them or picks them up, and he can do with them whatever he wishes.

LAW XLIX.**Where a Man Abandons His Property It Belongs to the First Person Who Takes Possession of It.**

Men sometimes take a dislike to their property, abandon it, and throw it away, so that it may belong to whoever wants it. For this reason we decree that whenever a man throws away any of his personal property, with the intention of relinquishing it, whoever first takes possession of the same and removes it, shall become its owner, and it shall belong to him from that time forward; except where the property which he abandoned happens to be a sick or wounded slave, whom his master has cast aside or deserted. Such a slave, by an abandonment of this kind, becomes free as soon as his lord forsakes him, and although some other party may remove, care for, and cure him, he, nevertheless does not acquire the ownership of said slave. We also decree that men do not lose the ownership of property which they throw into the sea through fear of a storm as we state in the Fifth Partida, in laws which treat of this subject.

LAW L.**When a Man Abandons Any Immovable Property Belonging to Him the First Person Entering Upon It Will Become Its Owner.**

When a man abandons any immovable property which belongs to him, for the reason that he does not like it, as soon as he actually leaves it with the intention of not claiming it afterwards as his, whoever first enters upon it will become its owner. But where he does not leave it, although he may state that he does not desire it to be considered his from that time forth; nevertheless, while he still holds it in this way no one else has the right to enter upon it; and if he does, he will not obtain its ownership until the party actually leaves it, and abandons its possession.

Moreover, we decree that where a man abandons any of his property because, through fear of enemies, or robbers, he does not care to go to it, no one can enter upon it, and, even if he does, he will not acquire its ownership; for though a person of this kind may actually relinquish possession he, nevertheless, retains in his mind the ownership of the property, and therefore no one should, or has a right to enter upon it.

TITLE XXVIX.

Concerning the Periods of Time by the Lapse of Which a Man Loses His Movable as Well as His Immovable Property.

The wise men of the ancients designated certain periods of time, by the lapse of which a man could lose or gain the ownership of property. Wherefore, since in the preceding Title we spoke of this subject in general, and explained how a man could gain or lose property in many ways; we desire in this one to treat especially of the way in which one, by lapse of time, can gain the property of another or lose his own. We shall show in the first place for what motive emperors, kings, and wise men were induced to establish the rule that a man could lose or gain property by lapse of time, and also who can gain it in this way and who cannot; what kind of property, whether personal or real, can be gained by lapse of time; by the lapse of how much time each of these is obtained; and in what way, and for what reasons, an interruption may take place in the time by which a man has begun to gain a title to property.

LAW I.

For What Reasons the Wise Men of the Ancients Were Induced to Establish the Law That Men Should Lose Their Property Through Lapse of Time.

The wise men of ancient times were induced to establish the law that property could be gained or lost by lapse of time, for the following reason to-wit: in order that every man might be certain of the ownership which he had of property, for if this were not the case, some might be negligent and forget their property, and others might enter upon it and hold it as their own, and suits and controversies of many kinds might arise, so that a man could not be certain to whom the property belonged. Wherefore, to avoid the expense and injury which men might suffer from such suits and controversies, they deemed it proper to fix a certain time, by the lapse of which every kind of property might be gained or lost if those to whom it belonged were negligent in taking care of it, when it was in their power to do so; and, also, that the ownership of property might be certain.

LAW II.

What Kind of a Man Can Obtain the Ownership of Property Belonging to Others by Lapse of Time.

Any man of sound mind, altho a minor, may obtain property by lapse of time, but an insane person, or one who has lost his memory, cannot begin to gain or lose any property in this way, after he has lost his mind. This is the case because he has no will or understanding to gain or lose property even though he may have it under his control. If, however, before he lost his mind, he had commenced to gain the title to any property through lapse of time, he, himself, or whoever inherits his estate, can certainly obtain it, just as well at the time when he was out of his mind, as he did before he was in that condition.

LAW III.

A Slave Cannot Obtain the Property of Another Person Through Lapse of Time.

No one who is a slave can obtain the ownership of property through lapse of time. This is the case because it would not be consistent for anyone to exercise ownership over other property who cannot do so over himself. Where, however, a slave keeps a shop belonging to his master; or is an artisan working at any

trade; or has capital or property of his own of which he makes use as a merchant, a broker, or a manufacturer; and, in the course of a business of this kind, begins to hold property according to law, his master can secure it for him by lapse of time. This is the case because he is the master and possessor of the slave and his capital or any private property which he manages.

LAW IV.

What Kind of Property Is Called Movable, and How It Can Be Obtained by Lapse of Time.

All property which men can convey from one place to another, and all that which can move of itself naturally, is called movable, and also those things which men can transport from one place to another, as, for instance, cloth, books, wheat, wine, oil, and all other articles of this kind; and that which naturally moves of itself includes horses, mules, and other beasts of burden, herds, birds, and other similar animals. Wherefore we decree that the right to all movable property which has not been stolen, or taken by force or robbery, can be acquired by lapse of time, as well as the rents and profits derived from the same, but where it is stolen, or taken by force or robbery, its ownership, or that of the rents and profits derived from it is not obtained by lapse of time.

LAW V.

When a Purchaser Is Entitled to the Increase of a Female Slave, a Mare, a Cow, or Any Other Property of This Kind, Which Has Been Stolen, or Secured by Robbery, and Sold.

When a female slave, a mare, a cow, or any other property of this kind of the class which spontaneously yields an increase, after it has been stolen, or obtained by robbery or violence, is sold to anyone, or the party who obtained it in any of these ways disposes of it; we decree that when he who purchased said property acted in good faith when he did so, thinking that it belonged to the party who sold it to him, or that he had not obtained it through bad faith, or in an unlawful way; and, after he purchases the property, it conceives, and brings forth while under his control; he can, by lapse of time, acquire the increase which he obtains in this way. But if after he had purchased it, and before it conceives, he should learn that the party who sold it to him came into possession of it unlawfully, that he cannot acquire, by lapse of time, the increase yielded spontaneously by said property. If, however, after the animal had conceived and while it was still in his power, he should ascertain that it did not belong to the party who sold it to him, but was aware that he had obtained it by means of theft, robbery, or violence; he can acquire the ownership of said increase by lapse of time.

But if he knew that it had been stolen, or taken by violence or robbery, he cannot acquire said increase by lapse of time, just as he could not acquire its mother; and if, after said animal has brought forth, he should learn that it had been seized by force, or obtained by robbery or theft, and he did not previously know this, and he should then notify the party to whom it belonged, stating to him that if he had any right to said property he must claim it, and the latter should not be willing to do so; from that time forth he can acquire the increase of said property by lapse of time. We decree that the same rule shall apply where the said party wishes to notify the owner, and does not find him, because he was so distant from the place that he could not send him word.

LAW VI.**Neither the Ownership of Property Which Is Sacred, Nor That of Any Man Who Is Free, Can Be Acquired by Lapse of Time.**

Any property which is sacred, holy, or religious, cannot be acquired by lapse of time. We decree also that the ownership of a freeman cannot be obtained by lapse of time when anyone holds him in his power as a slave. Moreover, we decree that no man can gain, by lapse of time, the right to dispense justice although he may exercise it on some occasion; except where the king or the other lord of that locality, who has authority to do so, especially grants him permission. We also decree, that no one, by lapse of time, can acquire any tribute, taxes, revenues, or any other dues whatsoever which belong to the king and which they have been accustomed to pay him; nor can they avoid paying them although there might have been a time when they did not do so, because they had concealed them, or had given them to others.

LAW VII.**The Ownership of Squares, Roads, Pastures, Commons, or Other Places of This Kind, Which Are the Property of the People, Is Not Lost by Lapse of Time; and Concerning Other Matters.**

Neither a square, a street, a road, a pasture, a common, nor any other place of this kind which is for the general benefit of a town, castle, or community, can be acquired by any man through lapse of time. But with regard to property of another nature, as, for instance, slaves, flocks, money, ships or any other chattels whatsoever like these, even though it may belong to the council of any city or town ownership of the same can be obtained after the period of forty years. This is the rule for the reason that, although it belongs to all in common, all do not make use of it, as is the case with the other property aforesaid. If, however, the city, town, or other community which has lost any property of this kind by the lapse of forty years, within four years after said period, petitions the king, the *adelantado*, or the judge of that district to decree that the lapse of said time shall not affect them, and to grant them permission not to lose their property by reason of it; he should grant their request; and, in that case, they will lose nothing by the lapse of said forty years. But where four years, in addition to the forty, have passed, and they did not petition, they cannot do so from that time forward; and the party who has possession of the property is entitled to it through the lapse of the said forty years.

LAW VIII.**Minors Under the Age of Twenty-five Years, Sons Under the Control of Their Fathers, and Married Women, Do Not Lose Their Property Through Lapse of Time.**

Minors under twenty-five years of age cannot lose their property by lapse of time until they have attained their majority. Where, however, after they have become of age, anyone begins to acquire any of their property by lapse of time, he can do so, just as if he would acquire it from any other man whomsoever. Moreover, we decree that no one can acquire the property of a son by lapse of time, as long as he remains under the control of his father. This is the case because the father, and not the son (unless by his order) can institute proceedings concerning the property of the latter. We also decree that the property which a wife gives to her husband by way of dowry cannot be acquired by lapse of time, except where the marriage has been dissolved. Where, however, the husband

is a spendthrift, and the wife, after she discovers that he is a man of this kind does not demand her dowry of him, and any person subsequently acquires said dowry by lapse of time, she is to blame, and the other party is entitled to it.

LAW IX.

By the Lapse of How Long a Period a Man Can Acquire Movable Property, and What Is Necessary to Acquire It.

When a man desires to acquire movable property by lapse of time, he must, in the first place, exercise good faith in holding it, and have possession of it for some lawful reason; as, for instance, through purchase, as a gift, by exchange, or for some other cause like these. In addition to this he must believe that the party from whom he obtained said property in one of the ways aforesaid became its owner, and had power to transfer it. And it is also necessary that he hold it himself, or for another in his name, continuously for at least three years; and where he has had possession of it for that length of time, as above stated, he acquires its ownership, and although its original owner may appear subsequently and claim it, he should not be heard, except where he desires to prove that it was stolen from him, or that he was deprived of it by robbery or violence.

LAW X.

A Purchaser Does Not Act in Good Faith, Where the Owner of Property Tells Him Not to Buy It Because It Belongs to Him.

Where any person has been deprived of his property, and the party who has possession of it desires to sell it, exchange it, or give it to someone else; and he to whom it belongs informs the party who wishes to buy it or acquire it in any of these ways, that he who desires to sell, give, or exchange said property, has no power to do so and has no rights in it; and if, after this, he should buy it, or obtain it in any other way, he will not act in good faith if he keeps it; and, although it may be in his possession for three years, he cannot acquire its ownership, for it should be presumed that he purchased it or obtained it maliciously, since he was warned in this way; but where it happens that, when he purchased the property, or obtained possession of the same for any lawful reason, he thought that it belonged to the party who transferred it and was not warned that it belonged to someone else, as aforesaid; then it should be presumed that he acted in good faith in retaining it until the contrary is proved.

LAW XI.

A Party Who Purchases the Property of a Minor or of an Insane Person, or of the Attorney of Anyone, by Wickedly Corrupting Him, Cannot Acquire Said Property by Lapse of Time.

A man who purchases the movable property of a minor, an insane person or one who has lost his memory; or of one over whom a guardian has been appointed because he was a spendthrift; or of anyone who obtained said property from any of said persons as a gift, or by way of exchange, or in any other similar manner; shall be presumed to be guilty of bad faith in holding it, and for this reason cannot acquire its ownership after the lapse of three years.

Moreover, we decree that a party who purchases any property of the attorney of any man, through maliciously corrupting him by giving him something or by promising to do so, in order to induce him to sell said property for less than it is worth, and the owner is able to prove this; even though the other party may

have had possession of the property for three years he cannot acquire its ownership by lapse of time; for it is evident that he was guilty of bad faith in holding it, since he maliciously corrupted said attorney.

LAW XII.

He Who Purchases Property, or Receives It in Exchange, Should Act in Good Faith.

There are men who give or exchange property which is not theirs, and the parties to whom said property passes by either of these means, act in good faith in accepting it, thinking that those from whom they receive it have the right to dispose of the same. Wherefore, we decree that if at the time when they acquired possession of said property, they acted in good faith in obtaining it, as above stated; even though before it came into their possession, or afterwards, they acted in bad faith, believing that those from whom they received said property were not its true owners; this will be no disadvantage to them or to their heirs, for if they have had possession of property obtained in this manner for the period of three years, they will acquire ownership to it by lapse of time. But a party who wishes to acquire property which he has purchased by the lapse of said time, must, by all means, act in good faith, at both these times, that is when he purchased it, and until he has been placed in possession of said property. But where the party who obtains control of the property of another either by gift, sale, or purchase, acts in bad faith with regard to it before he acquires its ownership by lapse of time, as aforesaid, and afterwards sells or transfers it to someone else because he knew that it belonged to another; a person of this kind cannot afterwards acquire said property by lapse of time, for the reason that he acted in bad faith when he obtained possession of it.

LAW XIII.

Whether a Master Acquires, or Does Not Acquire, the Ownership of the Property of Another Which His Slave Purchased with His Own Money, or Which Another Purchased Under His Direction.

Where a slave has charge of the capital of, or conducts a business for, his master, and buys property with the money which he holds in this way of a man who was not its true owner, and acted in good faith in buying it, thinking that it belonged to the party who sold it, his master can acquire it by lapse of time; even though he knew that the party from whom the slave received it has no right to sell it, except where the master was present when the slave bought it and did not oppose the transaction, having the power to do so; for then he cannot acquire the said property by lapse of time. Moreover, we decree that where a master orders his slave to purchase anything not as stock, and not giving a definite description of it by saying to him: "Buy me a horse or a beast of burden;" (or any other kind of property), not designating the person to whom it belonged; and the slave was aware that the property which he purchased did not belong to the party who sold it to him; in a case of this kind the master will acquire it by lapse of time, even if he ascertained subsequently that the party who sold it had no right to do so. The same rule shall be observed when anyone directs an agent to purchase something, and does not mention particularly from whom.

Where, however, the party whom he directs to make the purchase is not an agent but an ordinary messenger, then the good or bad faith of the latter will be either to the advantage or disadvantage of the person by whose order he made said purchase. But where a master orders a slave, or any person whomsoever, to buy some property for him, stating specifically what it is, and he knew that the

party from whom he ordered it to be bought has no right to sell it; he cannot acquire the ownership of said property by lapse of time; even though the party who purchased it by his order did so in good faith. What we decree in this law concerning a slave also applies to a son to whom his father has given money to carry on some kind of business.

LAW XIV.

A Man Can Acquire Property as His Own by Lapse of Time Thinking That He Had Obtained It in Some Lawful Way, When He Did Not.

Where a man considers any personal property his own, thinking that he had purchased it, or that it had been given him, or that he had obtained it in some other lawful way; and afterwards he ascertains that this is not the case, even though it may have been in his possession for three years, he cannot acquire it by lapse of this time. But where he orders his steward, or his attorney, or any other man in his service to purchase property, or to obtain it in some other lawful manner, as, for instance, by exchange, or by gift or in some other way similar to these; and the party to whom he gives the order does not comply with it, but procures the property in some other way which is not lawful, and states to his principal that he had bought it, or obtained it in the same way that he had ordered him to do, and he should have possession of said property for three years, he can acquire its ownership by lapse of time, for the reason that he acted in good faith when he took it, although he was mistaken; for since the mistake was attributable to a proper motive it should not cause him any embarrassment.

LAW XV.

In What Way a Man, by Lapse of Time, Acquires the Bequests of Deceased Persons, and Payments Made to Him for Property, Thinking That They Are Owning to Him.

Men sometimes make bequests of personal property in their wills, which are not valid according to law, or they make them in one will, and afterwards revoke them in another, and the heirs and those whose duty it is to execute the will, pay them, supposing them to be valid. For this reason we decree that where those who receive such property, have it in their possession for three years, they cannot be sued for it, and they acquire its ownership by lapse of such time. We decree that the same rule shall apply where a man bequeaths, by his will, any personal property to a certain individual, designating him particularly and another person of the same name appears and receives said property, thinking that it had been bequeathed to him. If a person of this kind holds possession of said property for three years, without a demand being made for it, he will acquire its ownership by lapse of such time; although the party to whom it was bequeathed may wish to prove that it was the intention of the testator that it should be left to him, and not to the party to whom it was given.

We also decree that where a man thinks he owes something to another party, and pays him, and he who receives the money also believes that he was entitled to it, although this was not the case, if he retains the possession of it for three years without a demand being made upon him for the same, he can acquire its ownership by the lapse of said time.

LAW XVI.

**A Man Can Add the Time During Which He Had Control of Property to That
During Which the Party from Whom He Obtained It Held It
in His Possession.**

Where a man has begun to acquire the ownership of property by lapse of time and dies, and said property descends to his heirs, or they bequeath it by will, or sell it, give it away, or exchange it, before the time has elapsed by which they are entitled to its ownership; in this case we decree that where the party to whom said property passes in any of these ways, acted in good faith while it was in his possession, and made use of it for so long a time after it came under his control that this, added to the other period for which the party from whom he obtained it had held it would entitle him to acquire it by lapse of time; in order to accomplish this, he can take advantage not only of the time which the other party held it, but also of the period during which it was in his own possession.

We also decree that where, after he had begun to obtain the ownership of said property by lapse of time, he pledged it to another party before the period had elapsed by which he could acquire it, by relinquishing it in this manner he is not hindered in the acquisition of its ownership; for he can count the time during which it remained in his possession, as well as that during which the party to whom he pledged said property held it; and he will be entitled to its ownership if the time during which both of them had possession of said property was long enough to insure its acquisition.

LAW XVII.

**He Who Holds Property in Pledge Does Not Lose His Right to Obtain It by
Another's Possession.**

Although men can acquire the ownership of movable property where they obtain it in good faith, or in any other lawful way, and have had possession of it for three years, as we have shown in the preceding laws of this Title; nevertheless, where the movable property that anyone desires to acquire by lapse of time has been pledged by its owner, before the other party has had sufficient time to acquire it thus, the pledgee's rights are unaffected by such possession.¹

LAW XVIII.

**By the Lapse of How Long a Time the Ownership of Immovable or
Incorporeal Property Can Be Acquired.**

We have explained, up to this point, how the ownership of movable property can be gained by lapse of time, and how we intend to speak of other property which is immovable or incorporeal, and show how its ownership can be acquired

¹The law of the acquisition of both personal and real property by prescription dates back to the Twelve Tables, which fixed the term of one year as establishing the right of the party in possession to the ownership of every kind of chattels. By the Roman Law the exercise of good faith on the part of the holder of the article in question was not essential, in which respect it differed from the rule of the *Partidas*. The Visigothic Code made the time thirty years, except in case of fugitive slaves, when it was extended to fifty. This regulation also applied to actions at law. "*Valitura sanctionis huius aeternitate decernitur, ut si per tricennii tempus, seu fiscus de quorumlibet jure quodcumque tenuerit, sive quilibet de fisci, extra mancipia fiscalia, aut cuiuspiam rebus aliquod fortasse possederit, perenni sibi met iure vindicet et retinet.*" (For. Jud. X-II-4.) Title to personal property by prescription was not recognized at common law, which only permitted its enjoyment to be acquired through occupancy, the right to which was based upon the presumed abandonment of the article by the original owner. In the United States it is dependent on the time fixed by the statutes of limitation of the several commonwealths within which a suit must be brought to recover such property. Under the Spanish Code the title to a chattel passes after the lapse of three years, where there is uninterrupted possession and good faith is exercised, and unconditionally after six years. (Cód. Civ. de Esp. XVIII-II. Art. 1955.) The French law is more absolute: "*En fait de meubles, la possession vaut titre.*" Where property has been lost or stolen the owner can claim it within three years. (Cod. Civ. de Fr. III-XX, Art. 2279.) The Italian Code assigns two years for the recovery of movables under such circumstances. (Cod. Civ. de It. XXVIII-II, Art. 2146.) The law relating to prescription in general is very diffuse and complex under this system.

by lapse of time. Wherefore we decree that where a man obtains property from another party in good faith, as, for instance, by purchase, gift, exchange, bequest, or in any other lawful manner, which is of such a nature that cannot be moved, and holds possession of it for ten years, when its owner is in the country, or twenty when he is elsewhere, he can acquire its ownership by lapse of said time, although the party from whom he received it was not its true owner; and from that time forward he is not bound to be accountable for it to any man, even though he says that he desires to prove that he is the true owner of said property, and did not know that the other party had obtained it by lapse of time. What we state in this law applies when the party who transfers the property and the one who receives it both act in good faith, thinking they have power to complete the transaction, and he to whom said property passes holds possession of it in peace, and no demand is made upon him for it during the whole time necessary for the acquisition of its ownership.

LAW XIX.

Where a Party Who Conveys Property Knows That He Has No Right to Do So, He Who Receives It Cannot Acquire Its Ownership in Less Than Thirty Years.

Where the party who conveys immovable property knows, or truly believes that he had no right to do so, then he who received it from him cannot acquire its ownership in less time than thirty years; except where the owner of said property, who had a right to it, knew that it was conveyed and did not claim it within ten years after he learned this, being in the country during that time; or within twenty years, if he was elsewhere. In an instance of this kind the party can acquire possession of said property by the lapse of one of these two periods, that is to say ten, or twenty years. The owner of said property will be considered absent from the country, when he was not in any part of the province where the property was situated, whose ownership was acquired by lapse of time; and he is understood to be in the country where he is anywhere in said province, although he may not have been in the locality where the property, which was obtained by lapse of time was situated.

LAW XX.

How Time Should Be Reckoned, When a Man Holds Property, and Its Tenant or Owner Leaves the Country.

A man sometimes begins to acquire the ownership of immovable property belonging to another, by lapse of time, while its owner is in the country, and, afterwards, before the requisite time has elapsed, either he, or the other party, who is the owner, leaves the country. For which reason we decree that the time which elapsed from the date at which he began to acquire said ownership, until either of said parties left the country, shall be reckoned in the manner which we have already stated, by means of which the ownership of property can be acquired by the lapse of ten years, where the owner remains in the country. The other time, during which either of them was elsewhere, should be doubled, in the way we have stated property can be acquired by the lapse of twenty years, during which the owner was not in the country; so that, if the party held the property for five years, while both were present, and ten years after either of them had gone elsewhere, he can acquire said property by the lapse of this time.

LAW XXI.

A Man Is Entitled to Acquire the Ownership of Any Property Whatsoever Which He Has Had in His Possession for Thirty Years, Whether He Acted in Good Faith or Not.

Where a man has had possession of any property for the period of thirty years, or more, continuously, no matter how he may have obtained said possession, and no suit is brought against him during this time, he is entitled to its ownership, although said property may have been stolen, or obtained by violence or robbery; and even if its owner may desire to demand it of him, he will not be bound from that time forward to be responsible for it, protecting himself by this said lapse of time. Where, however, he is deprived of its possession by losing it, or in some other way, he has no right to bring suit in court for it against the party who finds it, except where the party who obtains it has stolen said property or obtained it from him by force or robbery, or has received it from him by way of loan, or has rented it, from him, for then he will be entitled to bring suit for, and recover it.

We decree that the same rule shall apply where a court, by default of an answer, has obtained possession of said property from the party who has acquired it by this lapse of time; for in this case if he comes within a year and desires to answer the complaint filed against him, and pay the costs, he can recover said property. Moreover, we decree that where any person has had possession of real property for thirty years or more in good faith, thinking that it was his, or had belonged to his father or that he had obtained it in some other lawful manner he can acquire its ownership by this lapse of time, and protect himself, by means of it, against all claimants of said property; and if he should happen to lose possession of it, he can demand it of whoever finds it, except where the true owner finds it. In this case, if the owner recovers it without violence and without fraud, and can prove the ownership which he exercised over said property, he will not be required to surrender it to him.

LAW XXII.

A Man Can Lose Debts Which Are Owning to Him After the Expiration of Thirty Years, but Rented Property Is Not Lost by This Lapse of Time.

Where a man has been negligent continuously for thirty years, and has not brought suit for debts against those who owe them to him, he having had the power to do so, and, after that time, desires to collect them; the debtor can protect himself against him by this lapse of time, and will not be required to pay if he does not desire to do so. When, however, a man has rented or leased a house, vineyard, or other immovables from another party, for which he was required to pay him every year a specified rent or hire at a certain time; although he may have been in possession of said rent for thirty years he cannot acquire the ownership of it by this lapse of time, nor by any other which is greater. This is the case because he does not hold said property for himself but in the name of the party who rented or leased it to him.¹

¹Title by prescription, as applied to real estate, was established by the laws of Justinian after the lapse of ten and twenty years; ten where the parties were residents of the same province, twenty where they lived in different ones. Good faith, a just title, and continuous possession for these periods were indispensable conditions. The law of the Twelve Tables prescribed two years: "*Usus auctoritas fundi biennium caeterarum rerum annus esto*;" (Leg. XII—Tab. VI-IV,) which related mainly to intangible property. By the canon law, prescription was interrupted and annulled the moment that the party in possession became aware that his title was derived from one who had no right to transfer it. (Corp. Jur. Can. De Reg. Jur. V-XII-2.) The provision of thirty years in the Visigothic Code included real property as well as chattels. By the common law, title by prescription was required to be of immemorial antiquity. The Statute 32 Hen. VIII, c. 2. exacted possession of an ancestor for sixty years. The English as well as the American rule refers, generally speaking, to incorporeal hereditaments. The French and Spanish

LAW XXIII.**After What Time a Slave Becomes Free.**

Where a slave goes about acting as a freeman for ten years, when his lord is in the country, or for twenty years when he is elsewhere, and the latter does not institute proceedings on account of the servitude which he exercises over him; and the slave acts in good faith, thinking that he is free; the master of said slave cannot afterwards claim him, nor can anyone else do so, and if he does claim him, the slave can protect himself by said lapse of time, and remain free by reason of it. But where he is guilty of bad faith, being aware that he is a slave, and takes to flight, he cannot then protect himself by this lapse of time, except where he betakes himself to the country of the Moors. If, however, he goes about as a freeman for the period of thirty years, no one, after that time, can claim him as a slave, although he may have fled in bad faith to a Christian country. We also decree that the right which one house has in another, or one structure in another can be gained or lost by lapse of time in the way that we have stated in the laws of the Title which treat of this subject.

LAW XXIV.**A Man Cannot, by Lapse of Time, Acquire the Ownership of a Freeman as a Slave.**

No matter how long a time one man may have another in his possession as a slave, if he is free, he does not change his condition or state, and he cannot oppress him, or claim him as a slave in any way on account of the time which he held him as such.

LAW XXV.**Where a Slave Acts As a Freeman at the Time of His Death, a Claim Can Be Made Against His Children Within Five Years, but Not Afterwards.**

If, at the time of his, or her death, a male or female slave acted as if he, or she was free, thinking in good faith that this was true, his or her master can institute legal proceedings against the children of said slave and their property, if they have any, within five years from the time of his death, and if no claim is made within said time, neither their master nor any man whether he be of high or low rank can do so afterwards, not even if he should be the king, or the member of some council, or any person whosoever who may wish to make such a claim. But where it happens at the time of the death of a man who was free another held him as his slave, and a relative of his, or any other person interested in his condition or his property desires to institute proceedings to determine the standing of the deceased, wishing to show that he was free, he can do so within five years, or even afterwards whenever he pleases.

regulations on this subject coincide with those of the civil law; the Italian Code fixes the terms of ten years where the land or easement was acquired in good faith, and thirty as barring an action for the recovery of both real and personal property, regardless of how it was obtained, as also set forth in the *Partidas*. The rule in Louisiana is identical with that of the Civil Law. (Civ. Cod. of La. XXIII-3, Art. 3337, 3338.)—Ed.

LAW XXVI.**By What Lapse of Time Churches Lose Their Property.**

No property whatever of that designated immovable, which belongs to a church or religious community, can be lost by the lapse of less time than forty years. But the movable property of such institutions which is of such a nature that it can be lost by lapse of time, can be acquired, as against said institutions, after the expiration of three years, in the same way which we have stated its ownership can be acquired from other men. No man, can however, acquire other property which belongs solely to the Church of Rome within less time than a hundred years.

LAW XXVII.**How a Person Who Holds Property in Pledge May Lose Any Rights Which He Has in It by Lapse of Time.**

Where a man holds the property of another in pledge, no matter what kind it may be, whether personal or real, and, after it has been pledged to one party, its ownership passes to another by purchase or in any other lawful way; and the latter, when he has obtained it in this manner holds it in his possession for ten years, acting all the while in good faith, the party who held it in pledge being in the country during said time; or, where twenty years have elapsed while he is elsewhere, and during all this time suit was not brought in court against him for it, he will be entitled to it, and the other party who held it in pledge will lose whatever rights he had in it. If the party to whom the ownership of the property passes, as aforesaid, acted in bad faith when he received it, knowing that it was pledged, and that the party who transferred it had no right to do so, then he cannot acquire its ownership in less than thirty years; but where it was in his possession for thirty years, and the party who held it in pledge did not demand it of him, he will acquire its ownership by this lapse of time, and the other party who held it in pledge will lose whatever rights he had in it. But where it happens that the owner of said property, or his heir, or any other person to whom he, himself, hypothecated said property, pledges it a second time, subsequently to this, none of said parties can acquire the ownership of the same by the lapse of less than forty years.

LAW XXVIII.**What Persons Do Not Lose Their Property Through Lapse of Time, on Account of Absence.**

When a man is in the army, or absent on a foraging expedition, or employed on a mission of the king, or of his Council; or in captivity, or at school for the purpose of learning some science; or on a pilgrimage; or employed in any way similar to these; and, in the meantime, while he was in any of the places aforesaid, another party begins to acquire some of his property by lapse of time; we decree that, within four years after his return, he can ask the judge of the district to order that the time by which said party had commenced to acquire the ownership of said property against him, may not be counted. The judge should grant him this request, but if, after his arrival, and during the four years aforesaid, he, or his heir—if he died while absent—did not ask this of the judge within four years from the day when the person who was to inherit his property learned that he was dead in any of the places aforesaid; he cannot afterwards make such a request, and the ownership of the property obtained in this way by lapse of time shall remain secure in the other party.

LAW XXIX.**In What Way Ownership of Property Which a Man Has Commenced to Gain by Lapse of Time Is Interrupted, or Lost.**

The ownership which a man begins to acquire by lapse of time is interrupted and lost by desertion of the property, or by deprivation of its possession before the time has expired by which said ownership can be gained; so that, although he may recover it after this, he cannot include the past with the future time, or count together to acquire ownership by this means, but he should begin to reckon again from the day on which he recovered said property.

We also decree, that where anyone has begun to acquire the property of another by lapse of time, and the party to whom it belonged, and against whom the limitation ran, causes him to be summoned with regard to it by a letter of the king, or by one issued by a judge or a doorkeeper; or sues him for it in court, the time which has commenced to run against him is interrupted and lost on this account. Moreover, we decree that when a man is the debtor of another on account of something which he ought to pay him, and the party to whom it was owing neglected for so long a time to demand the debt that the other party commenced to acquire it by lapse of time; and after this, the debtor renews the debt which he owed, by reducing it to writing, or by giving security for it, or by giving pledges, or by paying something on account of loss, or by paying part of the amount, or by performing some other act like this, after the limitation had commenced to run; the time is interrupted, and the party will lose, for this reason, the time by which he had begun to acquire ownership as against his creditor. We decree that the same rule shall apply where the owner of the debt demands it of the debtor in the presence of friends or arbitrators.

LAW XXX.**What the Owner of Property Should Do in Order Not to Lose It by Lapse of Time Where the Man Who Had Possession of It Leaves the Country, Dies, and Leaves a Son Under Seven Years of Age, or Where the Person Who Has Possession of Said Property Is a Powerful Man.**

Where a man leaves the country after he has begun to acquire ownership of property by lapse of time, or where he departs of his own accord, or dies and leaves an orphan under seven years of age without appointing a guardian for him, and if, for any of these reasons, the party against whom he has begun to acquire the ownership of said property by lapse of time is unable to bring suit against him in court; we decree that it will be sufficient for him to appear before the judge of the district, or before the bishop, where he cannot have access to the judge, or before men living in the neighborhood of the house in which he resides, and face the party who has begun to acquire the ownership of said property by lapse of time, and state that he would willingly bring suit for it in court, but is unable to do so on account of one of the impediments aforesaid. By confronting the other party in this way, the time by which the latter has begun to acquire the ownership of said property is interrupted and lost, just as if suit had been brought against him in court on account of it. We decree that the same rule shall be observed when the party has begun to gain ownership of said property by lapse of time and is a man of such great power that the owner did not dare to institute proceedings in court against him.

TITLE XXX.

In How Many Ways a Man Can Gain Possession and Occupancy of Property.

We have explained in sufficient detail, in the laws of the Title preceding this one, how men obtain or lose the ownership of property by lapse of time; and, for the reason that such acquisition cannot occur unless the party have possession or occupancy of said property, we desire to speak here of possession. We shall show in the first place what it is; how many kinds there are; who can obtain it and how; and afterwards we shall state how the party who has already obtained it may lose it.

LAW I.

What Possession Is.

Possession means merely the act of placing the feet;¹ and, as the wise men of the ancients said, possession is the lawful occupancy which a man has of corporeal property by the aid of the body or the mind. For property which is not corporeal, as, for instance, certain rights which some lands have in others, and the right by which a man demands his debts and other incorporeal property like this, properly speaking, cannot be possessed or actually held; but where the party to whom their use belongs exercises it, and the person in whose lands he holds such rights consents, this constitutes a kind of possession.

LAW II.

How Many Kinds of Possession There Are.

There are undoubtedly two kinds of possession, one natural, the other through permission of the law, and called civil, in Latin. Natural possession is where a man himself actually holds property, as, for instance, a house, or his castle, or his lands, or anything of this kind, he being present in it. The other possession, called civil, is where a man leaves the house which he occupies, or land, or a castle, or anything else of this kind, not with the intention of abandoning it but for the reason that he cannot always remain there. In this case although he may not actually be the occupant of the property, he is so in his will and his mind, and such possession is as valid as if he had remained on the property.

LAW III.

How a Man Can Acquire the Occupancy of Property.

Every man of himself, if he is of sound mind, can acquire the occupancy and possession of property; and his sons, also, and the slaves under his control, and his agents as well can acquire it for him. For any property whatsoever that any of said persons may have obtained control of in the name of his father, his master, or the party for whom he acts as agent, the party in whose name the property was acquired has a right to its occupancy just as if he himself had taken possession of the same. Moreover, we decree that where a son obtains, in his own name, the possession of any property while he is under the control of his father, provided it is not of the kind called *castrense*, *vel quasi castrense peculium*, the son not only obtains possession of this kind, but the father does also, by reason of the usufruct of any profits made by his son to which he is entitled during his lifetime, as stated in the Title which treats of the authority which fathers have over their children.

¹ "*Possessio est quasi pedis positio.*"—Ed.

LAW IV.**The Guardian of a Minor or of an Insane Person, or the Officer of Any Council Is Entitled to Possession of Their Property.**

The guardian of a minor, or of an insane person, or of one who has lost his memory, or of a man who has wasted his property, is entitled to obtain possession of everything held in the name of the individual of whom they have charge. We decree that the same rule shall apply where an official of the Council of any city or town whose duty it is to attend to or collect taxes due to it, obtains possession of property in the name of the body whose official he is, as he acquires it for the benefit of said body whose property it is his duty to care for, just as if all the members of said body, together, had obtained possession of the same.

LAW V.**Laborers, Plowmen, and Those Who Rent or Hire Property,
Do Not Acquire Possession of It.**

Laborers, plowmen, and those who rent or hire the property of others, although they may obtain the occupancy of said property, nevertheless, the true possession of the same belongs to those in whose names they hold the land; and therefore, no matter how long they may hold said property, they do not, for that reason, acquire its ownership. Those, however, who hold land as a fief, or enjoy the usufruct of it, or hold it through quitrent giving some specified article each year for the same, where they have control of said land, are entitled to its possession, but the ownership still remains in its proprietor; so that persons of this kind, through such possession do not acquire its ownership, no matter how long they may hold it.

LAW VI.**What He Who Desires to Obtain Possession Must Do.**

When a man desires to obtain possession of a castle, a house, or any other property whatsoever, he must do two things: first, he must have the will to obtain it; second, he must actually enter it and hold it, or someone else must do this for him and in his name. If he fails to do either of these things he cannot acquire possession. Where, however, one man sells property to another, or gives it to him, or transfers it to him in any other way, and said property is before them, the one who makes the transfer tells the other that he places it in his possession, both of them looking at said property; and although the party may not enter upon it, or actually hold it, this placing it in his power by sight is sufficient for him to obtain possession of the same.

LAW VII.**A Man Obtains Possession of Merchandise if Keys Are Delivered to Him.**

Where one man transfers or sells to another, wheat, wine, oil, or any other merchandise in a granary or warehouse, or in any other building whatsoever, along with the keys of the place where said property is, he being present; by a delivery of this kind, made by giving the party the keys, it is understood that he also obtains possession of the merchandise in the house, although he does not see it as he does the keys which are given him openly, and is entitled to said merchandise, just as if it was actually placed under his control while he saw it.

LAW VIII.**How a Man Obtains Possession of Property by a Written Document Given Him.**

Where one man conveys land, or any other property whatsoever to another, by delivering to him the written instrument by means of which he obtained it, or by drawing up a new one and delivering it to him, the latter obtains possession although the property in question was not actually placed under his control.

LAW IX.**Where Anyone Conveys His Property, and Rents It from Another Person, He Loses Possession of the Same.**

Men sometimes transfer their lands to one another, with the agreement to retain for their entire lives the usufruct of said lands, and, after they have transferred them, but before they have given possession to those to whom they conveyed them, they rent said lands from the purchaser. We decree that in any of these cases the party to whom said land is conveyed obtains possession of the same, and is entitled to the ownership of it, just as if it had actually been placed under his control. The same rule will apply where the party who conveys the property says: "I admit that, from this time forward, I hold possession of this property in your name."

LAW X.**How a Man Obtains Possession of Property Where the Owner Places It Under His Control.**

When a man is given control of a house, or of land, or of any other kind of property whatsoever by the party who owns it or by the order of the latter, he obtains legal occupancy of the same. This rule will also apply where a judge gives him control of said property or it is done by his order, on account of payment, or because he recovered the property in court by proving that it belonged to him. But where he obtained control of it by default of an answer, or for the reason that he entered upon it by force or obtained it by robbery; although he may occupy it he is not for that reason entitled to actual possession, for if the owner should appear he can recover it, as we stated in the laws which treat of this subject.

LAW XI.**How a Purchaser Obtains Possession of Property Bought by Himself, or by His Agent.**

Where property has been sold or transferred to any man, and the party to whom it was transferred was placed in possession of it, the owner of said property knowing this and offering no opposition, the other party will then obtain possession of the same just as if the owner had himself delivered it to him; and we decree that the same rule will apply where the party who transferred said property gives possession of it to the agent of the purchaser, or if the purchaser, after he has bought it, gives it to anyone to be held in his name. In any of these cases he is entitled to, and can retain possession of, said property.

LAW XII.**After a Man Has Obtained the Occupancy of Property It Is Always Presumed That He Is the Possessor of It, Until He Abandons It With the Intention of No Longer Holding It.**

After a man has obtained the occupancy of property it is always presumed that he is the possessor of it, whether he actually holds it or not, until he abandons it with the intention of no longer keeping it; for though he may not always actually hold said property, he can always be the possessor of it in his mind. And it is not only presumed that a man himself is the possessor of property after it has been placed under his control, but likewise that he is such through his attorney, or his employee, his friend, his guest, his son, his slave, or any one of such persons who may hold it and make use of it in his name.

LAW XIII.**The Owner of Property Does Not Lose Possession of It Through Its Being Abandoned by the Party Who Rented It.**

Where a man maliciously abandons property which he rented or hired in order that someone else may obtain control of it, a fraud of this kind is no embarrassment to the owner of said property, nor does he for this reason lose possession of the same, but we decree that every injury or loss which he may suffer on account of anything of this kind must be made good by the party by whom the property was hired or rented. But where said party who rented or hired the property, places another in possession of it, with the intention of causing the owner to lose it, or where the latter is driven away by force; in either of these two cases the owner loses the possession of the property to which he was entitled although he does not lose the ownership of the same, and he cannot afterwards himself enter upon it, or expel the other party. He can, however, complain to the judge of the district of the person to whom he rented or hired said property, and, if he placed it in possession of someone else, ask that he be required to restore it, with all damages and losses which said owner may have suffered on this account; and that the party who was guilty of violence may be compelled to make reparation thereof, as the laws of this our book direct.

LAW XIV.**In How Many Ways a Man Loses Possession of Property.**

Just as there are certain ways in which men obtain possession of property, so there are other instances in which they can lose it after they have obtained it, and these are the following: The first is by the inundations of rivers, or by the rise of the sea, which overwhelm the property held by the party in such a way as to cover it entirely, so that neither he, nor anyone else for him, can retain its possession. The second is where the property of which he has possession is movable, and falls into the sea or into some river. However, although he loses possession in either of these two ways, his ownership of what he lost remains secure, so that he can claim said property from whoever finds it. The third case is where anyone buries, or consents to bury some person, in a place of which he has possession, with the intention that he may remain forever there, for, by an interment of this kind, the place becomes religious, and therefore the person entitled to possession loses it. The reason for this is that no man can retain possession of a place which is religious, holy, or sacred, as he can do in the case of other property.

LAW XV.**What Steps Should Be Taken With Regard to a House Which Is About to Fall Down, and of Which the Neighbors Are Afraid.**

Where a man has a house, a tower, or any other building which is about to fall down, and the neighbors, fearing injury from it, apply to him to demolish or repair it, or to give sureties to make good any damage which may result from it, and the owner is not willing to do so; and where, by reason of his obstinancy, the said neighbors are placed in possession of said edifice by the judge, the party owning the building loses the occupancy of the same by its being placed under their control in this way, if he persists in his stubbornness.

LAW XVI.**Emancipated Persons Lose the Occupancy of Their Property if They Are Again Subjected to Servitude.**

Men sometimes enfranchise their slaves, and it happens that, after they have emancipated them, the latter obtain possession of property and commit such offences against their masters that it becomes necessary to again subject them to servitude, or they are made slaves elsewhere, while passing for free-men. For this reason we decree that persons of this kind shall lose the possession of property which they formerly held; for since they have become slaves and have no control over themselves they cannot have possession of other property.

LAW XVII.**In How Many Ways Possession of Immovable Property Is Lost.**

In losing possession of property a distinction exists between movables and immovables, for where a man holds any immovable property he does not lose possession of it, except in one of the three following ways: First, where he is expelled from it by force; second, where some other party enters when he is not present, and when he afterwards comes will not admit him; third, when he learns that someone has entered upon the property of which he was possessor, and he is unwilling to go there because he thinks that he will not permit him to enter it, or that he will drive him out by force if he does enter; nevertheless, although he loses possession in any of these three ways, he still retains the power of bringing suit for said property in court, and the ownership remains his. But where the property is movable he can lose possession of it, although he may not know at the time that he lost it. This would be the case when it was stolen from him; however, where a man loses movable property which was in his possession, or of which he had charge, it, nevertheless, should be always understood that he still remains its possessor so long as he continues to search for it. But if the owner did not have the property in his charge, or had loaned, hired, or placed it in the keeping of another, and the party who held it for him in any of these ways, loses it; the owner, for this reason is deprived of its possession, except where the property lost in this manner is a slave. For although a slave may be lost while he is not in charge of his master, the latter always remains his possessor.

LAW XVIII.**How a Man Loses Possession of Birds and Animals.**

Where birds, wild animals, or fish, are caught or taken in hunting, and afterwards escape, and leave the control of the party who obtained them he loses their possession. The same rule shall apply when he leaves them in any large place, even if it is walled or enclosed or where he puts fish into any tank or pond, although the custom of men may be contrary to this.

TITLE XXXI.

Concerning the Rights of Servitude Which Some Things Have Over Others, and How They Can Be Established.

Some buildings have rights of servitude over others, and some lands over others, just as masters have over their slaves, and since in the preceding Title we treated of the ways in which men can obtain or lose the ownership or possession of property, we intend to speak here of these servitudes, and to show, in the first place, what such a servitude is; how many kinds there are; who has authority to establish them; and over what property, in what way, and how such a right can be lost after it has once been established.

LAW I.

What a Servitude Is and How Many Kinds There Are.

Wise men stated very properly that a servitude is a right or a use which a man is entitled to in the buildings or lands of others, to employ it for the benefit of his own. There are two kinds of servitudes; the first is that which one house has in another, and this is called, in Latin, *urbana*. The second is that which one tract of land has in another, and this is called in Latin, *rustica*. There is still another servitude which a man acquires in the property of another for his personal benefit, and which is not of special advantage to his real estate, as, for instance, where he is entitled to enjoy the usufruct of gathering the harvests on the lands of others, or solely to have the use of the house where he lives, or of the houses of others, or of the labor or slaves who are artisans or farmers. We shall speak of each one of these in the laws of this Title.

LAW II.

What Is Called an Urban Servitude and How Many Kinds There Are.

We stated in the preceding law that the servitude which one edifice has in another, is called *urbana*, in Latin: as, for instance, where one house is required to support another, by placing in it a pillar or a column, upon which a neighbor may rest a timber in order to support another story or a room, or any other structure of this kind; or the right to pierce the wall of a neighbor for the insertion of beams; or to open a window, through which the light may enter his house; or where one house must receive the water from the roof of another conveyed through a gutter or pipe, or in some other way; or where one house has such a servitude in another that it can never be raised to a greater height than it was at the time when the servitude was imposed, in order not to obstruct the view, or the light, or to uncover the house; or when a man has the right to pass through the building or the yard of another, for the purpose of entering his own house or his own yard, or anything else of this kind which may be for the benefit of buildings.

LAW III.

What Is Called a Rustic Servitude, and How Many Kinds There Are.

We stated that a rustic servitude was one which a certain tract of land had in another, and this would be the case where one man had a path, or a road in or a way through the land of another for the purpose of entering or leaving his own. We decree that where one man grants permission to another to have a path through his land, then the party to whom this was granted has the

right to go on foot or on horseback, alone, or in company with others, through the place where the said path was marked out in such a way that one precedes the other and they do not go abreast. Carts cannot traverse such a path, or beasts of burden loaded by hand. If one party states that he grants the other a road, the latter may drive carts along it and everything else which we have mentioned above; and if he grants him a way through his land, then we decree that he can traverse it on foot or on horseback, alone or in company with others, and take over it carts, or wood, or stone, dragging them on the ground, and all other things necessary for the benefit of the property on account of which the way was granted; and the said way should be as wide as was agreed upon between them at the time when it was granted, and through the place which was indicated; and if, at the time the grant was made, its width was not agreed upon between the parties, we decree that it shall be eight feet wide.¹ Where such a way is not straight, on account of its having a curve, it should be seventeen feet wide in the place where it is crooked, in order that carts may turn there.

LAW IV.

A Man Can Have a Servitude in the Property of Another for the Purpose of Conducting Water Through It.

Some lands become subject to servitude for the benefit of others by the establishment of entrances and roads through them, as we stated in the preceding law. They are also subject to these in another way, as, for instance, by means of canals, and because of other certain places through which water passes for mills, or to irrigate gardens or other real property. For which reason we decree that those who have a servitude of this kind in the property of another, should take care of, and keep up the ditch, aqueduct, canal, pipe, or the place through which the water flows, so that it cannot become wider, higher, or lower, or cause any damage to the party through whose land it passes. When the water traverses a ditch, for the purpose of supplying a mill, or a canal to irrigate orchards or any other lands, it should be kept up and protected by stakes, and no stones should be placed in it which might be a disadvantage to the property belonging to the other party. Where the supply of water is small, it should be conducted by means of earthen tiles; or leaden pipes underground, so that the parties may derive benefit from it, and the others through whose land it flows may not sustain any loss, or be injured on account of any structure erected in the place through which the water runs, or by the lack of the same.

LAW V.

The Servitude Which a Man Enjoys in a Spring Belonging to Another Person, Cannot Be Transferred to Another Without His Consent.

Where a man has obtained the right to conduct water to irrigate his land from a spring situated on the property of another, and the owner of said spring afterwards wishes to grant to a third party authority to make use of said water, he cannot do so without the consent of him to whom the right to use the same was first granted; except where the water is so abundant that it will be sufficient for the land of both of them.

¹ The Law of the Twelve Tables prescribed that a right of way should be eight feet wide, and sixteen where turns had to be made. "*Via ubi recta procedit, VIII, et ubi curvatur in obliquum, XVI pedes lata esse debet.*" (Leg. XII. Tab. VII-VIII.) No dimensions are given by the common law. In the United States the width of such a road is usually dependent upon statutory enactment, when not previously settled by the parties. The Civil Code of Louisiana fixes a width of eight feet when straight, and ten feet at turns. (Civ. Cod. of La. IV-4. Art. 776).—Ed.

LAW VI.**How a Man Should Make Use of the Servitude Which He Has in a Well, a Spring, or a Pond for the Purpose of Watering His Cattle There.**

Where a fountain, a well, or a pond is situated on anyone's land, and near to that of others, and the owner of the water grants them permission to obtain water there for themselves, their laborers, their beasts of burden, and their flocks; in granting permission of this kind he should allow them to enter and leave the land where the water is situated, so that they can have access to it whenever it is necessary for them to do so.

We also decree that where one man grants another permission, for all time, to put his oxen, or the animals with which he cultivates his land, in any meadow or pasture; the latter, by a grant of this kind, obtains a servitude in said meadow or pasture, and can make use of it, himself as well as the others who hold the property for the benefit of which he made such an agreement; and although he may sell or dispose of said meadow or pasture, the other party to whom the ownership of it will pass, cannot prohibit the enjoyment of said servitude.

LAW VII.**Concerning the Right Which a Man Has in the Land of Another to Make Jars There Into Which to Put His Wine or Oil, and How He Should Make Use of a Servitude of This Kind.**

Where a man has an olive plantation and is obliged to make jars to preserve the oil which he obtains from said plantation, or where he has another tract of land, where it is necessary for him to erect buildings to preserve his crops; and there is in the neighborhood still another tract where those things which he needs to use for these purposes are situated; as, for instance, good earth to make jars, or tiles, or building stone, or stone suitable for lime, or sand, or anything else like these; and the party who owns said land grants him permission, for all time, to remove from it the materials aforesaid, he can do so, and he can make use of them as long as they are necessary for the preservation of the crops of his land for which purpose this servitude was obtained, but for no longer.

LAW VIII.**A Man Does Not Lose the Servitude Which He Enjoys in the Property of Another by the Sale of a House, or by Its Ownership Passing in Any Other Way to Another Party.**

The ownership of lands and other property changes from one party to another. Wherefore we decree that in whatever way a house, a building, land, or any property whatsoever to which is attached a servitude for the benefit of some other, may be transferred in any of the ways we mentioned in the preceding laws, or in any other similar to them; the said property will always remain encumbered with said servitude for the benefit of the other land or person to whom it is owing.

We also decree that the property entitled to the enjoyment of the servitude—no matter to whom its ownership may pass—shall always enjoy the said servitude imposed upon the other property, which it formerly enjoyed, and that it shall be in no way interfered with or lost by reason of any change, except where some servitude was imposed upon said property for a specified time, or during the life of some particular individual. Other servitudes which are imposed for all time, arise by reason, not of the persons but of the property to which they belong, and for this reason they are not lost through change of ownership.

LAW IX.**Every Heir Is Entitled to Demand the Entire Servitude Granted the Property to Which He Is an Heir.**

When a man consents to grant a servitude in his house or his land to the building or the land of another party, and, after a grant of this kind, the party to whom it was made dies; although he may leave several heirs, each one of them has a right to claim the entire servitude. This is the case because a servitude cannot be divided, and therefore each of them cannot claim his share separately. Moreover, we decree that where the party who granted a servitude in his property, dies and leaves several heirs, the entire servitude can be demanded of each of them and they are bound by it, just as their ancestor was whose property they inherited.

LAW X.**In What Way All Owners of Buildings and Lands Should Grant a Servitude.**

Owners of buildings and lands can, every one of them, impose servitudes on his buildings or real estate. Where, however, there are several owners of one building or tract of land upon which it is desired to impose a servitude, all should consent for this to be one. Where some, and not all, give consent, those who consented cannot afterwards oppose the obtaining of the servitude by the party to whom they granted it. The others, however, who are unwilling to give their consent, each have the right to oppose it, not only in his own behalf, but in that of the others who refused permission; for none of the others is bound by the servitude through the consent of the rest, nor will it be any hindrance to them. If, however, after this, those who refused should be willing to give their permission and grant it, it will be as valid as if all together had consented in the first place.

LAW XI.**Persons Who Hold Property as a Fief, or for Quitrent, Can Impose a Servitude Upon It.**

Men hold lands, houses, and other buildings, which are of such a nature, that although they have possession of them and gather their crops, they are not absolutely their true owners; as, for instance, estates which they hold as fiefs, and such as some men hold for their own lives, and for those of their heirs, paying for them some designated quitrent, or being compelled to perform some special service. Wherefore we decree that where anyone holds any of the above-mentioned lands, and grants a servitude in it to another party; or where some one else grants it to him in his own property for the benefit of that which he obtained in this way, both servitudes shall remain forever valid, just as if they had been granted in the lands belonging absolutely to the said party.

We also decree that where one man purchases a house, or any other building, or any land of another, and both the purchaser and vendor agree that the property purchased shall be, in any way, subject to a servitude for the benefit of the other house, building, or tract of land, whether it belongs to the party who sells it or to any other person whomsoever; and the purchaser grants a servitude of this kind, even though the property which he is buying may not have yet passed under his control, said servitude shall be as valid as if the party had granted it in any other property whatsoever of which he was already the owner or possessor.

LAW XII.**A Servitude Cannot Be Sold Separately from the Property to Which It Is Attached.**

Where a house, or a tract of land is subject to a servitude for the benefit of another, the owner of said servitude cannot sell it, or dispose of it separately from the property to which it is attached, because a servitude is of such a character that it cannot be separated from the land or the building upon which it is imposed, except where the owner of said land or building gives his consent, or where the servitude relates to water which is obtained from one tract of land and irrigates another; for the party entitled to such a servitude has a right to transfer to another the water already flowing through his land for the purpose of irrigating a field or a vineyard situated near his said land.

LAW XIII.**Upon What Property a Servitude Should Be Imposed.**

Men can impose servitudes upon property which belongs to them, or which is, as it were, their own, as we stated above. This, however, is understood to relate to such a servitude as a man imposes upon his property which may be of advantage to the land or house of another party and not to that of himself; for men should make use of their own property, not in the way of a servitude, but absolutely as their own. Moreover, we decree that no servitude shall be imposed upon sacred, holy, or religious property, nor upon such as is for the use and common benefit of any city or town; as, for instance, market squares, commons, and other property similar to this.

LAW XIV.**In How Many Ways Servitudes Can Be Imposed Upon Property.**

All the servitudes which we mention in the laws of this Title that are imposed upon property for the benefit of some other, and upon certain buildings for the advantage of others, can be established in any of the three following ways. First, by the grant of those to whom the property belongs, by voluntarily imposing servitudes upon it, in consideration of affection, or of money received for the same. Second, such as are granted by men in their wills, as, for instance, when it is said: "I desire that the house of So-and-So, have such-and-such a servitude in my own, that it may never be raised higher than it is at present;" (or that he have permission to insert beams in its walls, or by giving him some other right similar to this, as, for instance, where he grants the party a road through his premises to enter and leave them, or to transport water over them to irrigate his own land, or anything else of this kind). Third, when men obtain servitudes in houses or lands, by making use of them for a certain time, as we shall explain hereafter.

LAW XV.**By the Lapse of How Long a Time a Man Can Acquire a Servitude in His Favor in the Property of Another.**

Where a servitude is of such a character that a man is daily benefited by it, without any exertion on his own part, as, for instance, where it consists of a stream flowing from a spring in the field of some other person or is something similar to this, and the party makes use of said water by irrigating his land for ten years, the owner remaining on his own premises and not manifest-

ing any opposition; or where he is absent and this takes place for the period of twenty years, the said party acting in good faith thinking that he had a right to do this; and where he does not obtain it through violence, or by reason of a request which he made to the owner of the spring, or of the field through which the water runs; he will acquire such a servitude by lapse of said time.

The same rule applies where anyone inserts a beam in his neighbor's wall, or opens a window in it by means of which light may enter his house; or objects to his neighbor raising his house in order that his own light may not be cut off; or where the cornice of his building projects over his neighbor's roof so that water falls upon it; in the case of any of these servitudes or others like them, by which a man profits every day without labor, the privilege can be acquired by lapse of the same time, and in the same way as we stated above concerning a watercourse. But with regard to other servitudes which men enjoy for the benefit and improvement of their lands and buildings, which are not made use of every day but only occasionally and with exertion, as, for instance, a path, a road, or a way which a party has through the lands of his neighbor; or in the case of water which flows once a week, or once a month, or once a year, but not every day, servitudes of this description and others similar to them cannot be acquired by the aforesaid lapse of time, but we decree that whoever desires to obtain them in this way, must either himself or those from whom he acquired them have made use of them for so long a time that men cannot remember when they began to do so.

LAW XVI.

By the Lapse of How Long a Time a Man Loses a Servitude by Not Making Use of It Himself, or Some Other Person for Him.

Where men are guilty of negligence, by not being willing themselves to use servitudes which they have obtained or have others do so in their name, they may lose them on this account. A distinction exists, however, between servitudes attaching to buildings, and those attaching to lands. For where a party has a servitude in the house of another, so that he is entitled to have a beam inserted into his wall, or have a window in it by means of which the light may enter his house, a servitude of this kind, or one like it, may be lost after ten years, where the party to whom it belongs is in the country and not using it or after twenty, when he is absent from it. This is understood to be the case where the party against whom the privilege exists removes the beam from his wall, or shuts up the window by which the light enters, or, in some other manner, places impediments in the way of the servitude in good faith, thinking he has a right to do so; for, where he does not obstruct the servitude in this manner, although the other party may not make use of it within the time aforesaid, he will not, for that reason lose it. But where the servitudes which men enjoy in lands and other property are of such a character that benefit is derived from them without the labor of the party receiving it, they cannot be lost, unless so long a time has elapsed during which they were not used that men have no remembrance of it. Where servitudes are of such a nature that they are used occasionally, and not every day, as we stated in the preceding law, they are lost where they are not used for the period of twenty years, whether the party to whom they belong remains in the country, or not.

LAW XVII.**How a Servitude Is Abolished When It Is United With the Property to Which It Attaches by a Party Purchasing Both.**

Servitudes may be lost in two ways in addition to those we mentioned above. First, by depriving the owner of the property to which the servitude attaches, if it was entirely his, but where it attaches to houses or land belonging to several persons, one of them alone cannot abolish it without the consent of the others. Second, where the party who owns the property upon which the servitude is imposed purchases the other to which it is attached; for, by reason of the purchase by which both pieces of property are united in the ownership of said party, the servitude is lost; and even though he may afterwards transfer it, or retain it for himself, from that time forth it should never be claimed; nor is the property purchased in this manner bound by said servitude except where, after this, a new agreement is entered into.

LAW XVIII.**One Person Can Acquire a Servitude for Himself, and Make Use of It Without His Associate.**

Where men hold a house or land in common to which a servitude existing against some other building or land is owing, and the property which they own together is divided between them; and afterwards one of them makes use of said servitude, which formerly existed in favor of both, and the other does not make use of it for the length of time we stated in preceding laws by which men lose servitudes; he will, for this reason, lose it. He cannot be benefited by the time the other party used it, because he was not his agent and did not make use of said servitude for his benefit; but where the property which belonged to said parties in common and to which the servitude attached is not divided, the use by one of them is of advantage to the other. This is the case because before the property was divided the servitude is single, and where one party makes use of it the rights of the other remain unimpaired; but after the property has been divided this is not so, and for the reason that he who does not use his portion as above stated, loses it.

LAW XIX.**A Man Loses a Servitude Existing in Favor of One House Against Another Which Provides That It Shall Not Be Raised to a Greater Height, if He Permits It to Be So Raised.**

A man loses a servitude which, attaching to one house and existing against another, provides that said house cannot be raised, or where the ground of one man is subject to the fall of water descending from the roof of another, where the owner of the house to which a privilege like either of these attaches gives authority to the other party who owns the house or the ground upon which said servitude was imposed to raise said house higher than it was formerly, or to erect any structure on the ground where the water falls; for it is presumed that when he granted the party authority to build there, he released him from the servitude to which he himself was entitled.¹

¹ The servitude of the civil law and of all ancient and modern legal systems borrowed from it is, to all extents and purposes, the easement of the common law, but is more comprehensive, inasmuch as it includes not only rights which contribute to convenience, but also privileges affording pecuniary advantage. The former gives the following concise definition of a servitude: "*Servitus est ius quo res alterius rei vel personae servit.*" (Corp. Jur. Civ. Dig. VIII-I.) While in England no specific classification of these rights has been made, a most minute and elaborate one existed under the Roman Law, set forth in no less than thirty-nine divisions and subdivisions. Nevertheless, in application and practice a close and remarkable resemblance can be traced between the two customs, indicating unquestionably in this instance,

LAW XX.

Concerning Servitudes Designated Usufruct and Use.

We have thoroughly explained in the preceding laws the servitudes existing in one house, in one edifice, and in one tract of land in favor of another. We now intend to explain here the third kind of servitude, which we mentioned in the second law of this Title; that is to say, the one which a man has in the house or the property of another for his personal benefit, and not especially for the benefit of his land. We decree that a man can personally enjoy a servitude of this kind in the property of another, in three ways. First, when one party grants to another, during his entire life or for a specified time, the usufruct derived from some land or house belonging to him, or from his slaves, or from his beasts, or from any other property from which rents and profits can be obtained. A grant of this kind can be made by agreement, or by will. However, the party to whom it was granted, in order to reap the profits of any of the property aforesaid, should act in good faith by first giving security that the property of which he enjoys the usufruct will not be lost or impaired by his fault, and that he will not be induced by covetousness to obtain more from it than is proper; and also, that, when he dies, or when for any other cause the time expires during which he is entitled to said profits, that the property shall be restored to the party who granted the usufruct of the same, or to whomsoever he may indicate, or to his heirs, if he should be dead. The party to whom said usufruct is granted obtains all the yield and income of the property with regard to which said grant was made, and he is entitled to profit by the crops of the same, and can sell them if he desires to do so, but he has no right to transfer or pledge the property of which he enjoys the usufruct.

The second way is when a man grants only the use of his house or his land, or of any other property of his. A party to whom a grant of this kind is made cannot profit by it so fully as he can by the usufruct; for the reason that he who has only the use of such property has no right to the crops of the same except where he needs them for his expenses; as, for instance, where the use of a certain orchard was granted him, of which he had a right to gather the fruit, or of a garden, from which he could take what was necessary for him and his family to eat, but could not give it to anyone else, or sell it. We decree that the same rule shall apply where one man grants another the use of his meadow, of his vineyard, or of any other property belonging to him. Moreover, we decree that a man cannot convey or pledge property of which he has the use; and that he must give good sureties that he will use said property in good faith, as an honest man should do, not damaging it in any way so that it may be depreciated in value, and be destroyed through his fault.

as in innumerable others, the dominating influence of Latin jurisprudence. The common law, however, in the consideration of these rights, regarded rather the benefit enjoyed by the dominant, than the inconvenience suffered by the servient tenement, and did not designate them servitudes, but easements. The term of prescription by which an absolute right is established by statute in England varies from twenty to forty years.

Rights in *alieni solo* were recognized by the Twelve Tables, and many of these have survived to our time, as, for instance, where a private way was interfered with or a public road obstructed, a party might pass through adjoining lands. "*Quorum agri ad viam proxime adjacent: terminos quisque suos pro libito mutare potest; quod si neglexerit, alteri quoque iumentum, qua lubet, via aperire licet.*" (Leg. XII Tab. VIII-IX.) By their provisions every house was required to be surrounded by an *ambitus*, or space two and a half feet wide, for the convenience and protection of the occupant; a measure that prevented the exercise of many urban servitudes, but which was abolished by Antoninus after land had enormously increased in value, and the inhabitants of cities had become so numerous as to render its enforcement impracticable.

Servitudes, being attached to the land,—"*Servitutem non hominem debere sed rem*"—only impede, to a certain extent, the right of the *dominus directus*, or owner of the same; belonging to the class of incorporeal hereditaments they are not susceptible of division; where they are discontinuous—that is dependent on conditions that they cannot be constantly exercised—they must remain for a long period in abeyance to raise a presumption of their abandonment. Where a servitude is continuous, neglect to make use of it will abrogate it within a reasonable time.

Servitudes, in general, are extinguished by nonusage in Spain in twenty years (Cod. Civ. de Esp. VII-II, Art. 546), and in France and Italy in thirty years. (Cod. Civ. de Pr. II-IV Art. 706.) (Cod. Civ. d' It. II-III Art. 666.) In the United States an easement is ordinarily deemed to be abandoned after the lapse of twenty years. The law of Louisiana fixes the time at ten years for residents, and twenty years for absentees. (Civ. Cod. of La. IV-4, Art. 785.) No limitation of time or place applies to property or rights belonging to the public. "*Nullum tempus aut locus occurrit regi.*"—Ed.

LAW XXI.**How a Man Should Act With Regard to the Use Granted Him in the House, the Slaves, or the Animals of Another Person.**

Where a man only has the use of the house of another person he has the right to live in it, with his wife, his children, and his family, and he can also entertain guests there if he desires to do so. Where one man grants to another the use of his slaves or his beasts of burden, he, himself, alone has the right to make use of them for his work, or for any other service; and he can neither hire or loan said slaves or beasts of burden to anyone else.

We also decree that where one man grants to another the use of his beasts, the party to whom said grant is made has the right to conduct said beasts over his lands, so that the latter may be enriched from the manure obtained from them and may yield better crops; and he is also entitled to the milk, the cheese, the wool, and the young of said flocks, which he requires for the expenses of himself and of his family, but he has no right to appropriate any of these things for the purpose of giving or selling them to anyone else.

LAW XXII.**How a Man Should Act with Respect to the Property of Which He Is Granted the Usufruct, and How He Should Protect, Attend to, Repair, and Cultivate Said Property.**

It is proper and just that a party to whom is granted the usufruct of any house, land, beasts, inasmuch as he desires to enjoy the benefit of the privilege granted him, should exert himself to the utmost of his power to take care of said property, protect it, and attend to it well and faithfully, so that where it is a house, he should repair it, and provide against its falling down, or depreciating in value through his fault; and where said property consists of land, he should cultivate it well and improve it; and where it is a vineyard or an orchard, he should do the same thing; and also when vines or trees die he should be sure to plant others in their stead; and where the property consists of beasts, and some of them die, he should replace them, and rear others instead of those that perished. Where the house of which the usufruct is granted is charged with a tithe or other tribute, or some tax, he should pay it out of the income which he receives from the same; so that said property may remain safe and secure, and no inconvenience result to the person to whom it belongs.

The party who has only the use of property, as we stated in the preceding law, is neither bound nor obliged to perform any of the above-mentioned acts with respect to the property which he holds, except where it is so small that he alone consumes all that it yields, by reason of the use which he has of it. In this case he would be bound to care for it, protect it, and pay the tax on it, as above stated.

LAW XXIII.**What a Man Obtains from a Male or Female Slave of Whom He Is Granted the Usufruct and the Products of Labor.**

Where a man is entitled to the usufruct products of labor of any male or female belonging to another party, he obtains from them all that said slave earns by the work of his, or her hands, or by the money or capital of the party to whom either of these rights is granted. But the gains of either of these slaves from property given them or left them by will, shall belong solely to the master of said male or female, except where said donation or bequest was

made to said slaves with the understanding that those who enjoyed the usufruct or the use of them should receive it; for, in this case, the latter, and not the owner of the property will be entitled to the same.

Moreover, we decree that if a female slave, the usufruct of whom was granted to another party, should have a son or a daughter, although it may have been born subsequently, while she was under control of the party entitled to the usufruct, it shall not belong to him, but to the owner of said slave; except where her master especially granted permission to said party to have it. There is the following reason for this, namely; though all the increase of flocks and herds ought to belong to the parties to whom the usufruct of the same is granted, nevertheless, with regard to the child of a slave this is not true, because, according to nature, the fruits of all property were given and granted for the service of man, and therefore it would be neither proper nor right, that he, for whose service the increase of all other property was established, should be included in the usufruct of another party.

LAW XXIV.

In How Many Ways the Usufruct Which a Man Enjoys in the Property of Another Can Be Lost.

It is in the natural course of events that everything which men grant by words, or perform by deeds, have certain ways by means of which it can be lost no matter how firmly established it may be. Wherefore since we have shown in the preceding laws in what way the usufruct, or the use alone, is established, we desire to state here, how either can be nullified or abolished. We decree that, where a party to whom the usufruct, or use alone, of any property was granted, dies, or is banished to some island for life, or has been emancipated and afterwards been lawfully returned to slavery on account of some offence which he committed, or, being a freeman, he himself consented to be sold as a slave; for any of these reasons the usufruct or the use, which said party had in any property is lost or abolished, and reverts to the owner of the same.

We also decree that where a party to whom the usufruct or use of any property was granted does not make use of it, or no one else does so in his name for ten years, he remaining in the country, or for twenty, when he is elsewhere; by the lapse of said time the right of the usufruct, or of the use which said party enjoyed in said property is lost, and reverts to the owner of the same. Moreover, we decree that where a party to whom was granted the usufruct or use of any property, afterwards grants to another the right which he had in it the usufruct or the use of the same is lost for this reason, and reverts to the owner of said property; and, from that time forward, said party will not be entitled to it, nor will the other party be to whom he granted it; for although a person of this kind, who has the usufruct of any property can rent it to some one else if he desires to do so, nevertheless, he has no authority to transfer the right which he had in it. We decree that the same rule shall apply where a party who had the usufruct of property purchases the property itself; since the usufruct is lost because the property, along with the usufruct of the same is subsequently united in the ownership of one person.

LAW XXV.**The Usufruct Is Lost When the House in Which It Was Granted Is Burned, or Falls Down.**

When an entire house or building of which the usufruct or the use alone was granted to any man is burned, or entirely demolished by an earthquake or any other agency, the usufruct held by him is lost for this reason; and although the party who enjoyed the usufruct or the use of said house or building may desire to rebuild it upon the same site he has no authority to do so, except where the owner of the property gives him authority.

LAW XXVI.**For How Long a Period the Usufruct Granted a City or Town Lasts, When the Time Is Not Specified.**

When the usufruct of any building, land, or other property belonging to another person is granted to a city or town, a grant of this kind should last a hundred years, and no longer, where no specified time was agreed upon; and after the said hundred years have elapsed the usufruct reverts to the owner of the property, or to his heirs. There is the following reason for this, namely; because the usufruct granted especially to the Council of any locality is lost by the death of all its members, and wise men estimated that, within a hundred years, all those would be dead who were living at the time when the usufruct was granted.

We also decree that where a town or district in which the usufruct was granted, as aforesaid, becomes depopulated, so that the ground is plowed or all the neighborhood is deserted, for this reason the usufruct will be lost. Where, however, all the residents of said neighborhood, or any portion of them, afterwards settle together in some other place, the right which they have in said usufruct shall remain secure, although they abandoned the site of the town which they occupied at the time when they obtained the usufruct.

LAW XXVII.**When the Right to Dwell in Any House Is Granted to Anyone, How Long Said Right Should Last.**

Habitatio, in Latin, means the same thing that residence does in Castilian, and has reference solely to houses and buildings. We decree that where one man grants another a residence in any house belonging to him, or leaves him this by his will, and does not state specifically at the time how long this privilege shall last; it is understood to endure for the entire life of the party to whom he grants it, or leaves it by his will. The party should make use of the property in good faith by taking care of it, and not causing it to depreciate in value, or fall into neglect through his fault. Moreover, he should give good sureties to restore the house to its owner, or to his heirs after his death, or, in compliance with any other agreement entered into between them; and the party to whom said residence is granted, has a right to dwell in it with whatever family he has, and even if he desires to rent or hire it, he can do so, but this must be to men or women who will be good neighbors. A man cannot lose the right which he has obtained to such a residence except by his death, or by relinquishing it without any compensation during his lifetime.

TITLE XXXII.

How the Construction of New Buildings Can Be Prevented, and What Should Be Done With Old Ones Which It Is Desirable to Demolish, and Concerning All Other Edifices.

Men erect new edifices, as, for instance, houses, towers, castles, and other buildings of this kind, on account of which their neighbors consider themselves injured, stating that they are constructed on their property to their annoyance and, because serious disputes may arise for this reason, we desire to speak here of such buildings, and describe them. Wherefore, since in the laws of the preceding Title we explained how a servitude in lands and houses is lost, we desire to speak here of new buildings which men construct, and how they can, or cannot, be a hindrance or cause loss. In the first place we shall state what a new building is; who can forbid or prevent its construction; in what way, and by whom this can be done; what force a prohibition of this kind has, after it is made; how a judge before whom a suit of this kind is brought should act; and we shall also treat of new and old edifices which are in danger of falling down, and how they should be repaired or demolished; and how all the buildings of towns, castles, and other places, should be repaired and kept up.

LAW I.

What a New Building Is, Who Can Forbid Its Erection, and in What Way and by Whom This Can Be Done.

A new building is every structure that is erected with a foundation in the earth, or one that is newly begun on an old foundation, or wall, or an addition by means of which the form and fashion of the old one is changed. This may take place by one man, or more working on, or adding to, or removing something from the old structure, for the purpose of making such a change. Every man can prohibit or prevent such building who thinks that he is wronged by it.¹ His sons, his slaves, his agents, his stewards, the guardians of minors in their names, or his friends, can do the same thing, but the latter should give security for those in whose name they make the prohibition that they will confirm the same. This prohibition can be made in one of the three following ways: First, orally by the party who desires to forbid the erection of the new building, as follows, to wit; "I notify you, So-and-So, to order the work on this building stopped, and not to construct it, and I say this to you because it is a new building, and you shall not construct it on my premises or where it may affect my rights, and therefore I forbid you, from this time forward, to proceed with it." Second, by the party taking a stone in his hand, and throwing it into said building speaking all the words which we stated he should speak in the first prohibition. Third, when the party who is desirous of forbidding the new building to be erected does not dare to go personally to the place where this is being done, through fear of those who have ordered it, because they are powerful men. In this case he should apply to the judge, and petition him to forbid the party who ordered said building to be constructed, as well as those who are working on the same, from proceeding with it, for the reason that he is being injured. The judge should then go in person, or send some man to notify said parties not to proceed with the building until the dispute has been settled in court. In whichever of these three ways the prohibition is made, it should be done in the place where the building is under con-

¹ This is founded on the time honored maxim; "*Ita utere tuo ut alterum non laedas;*" which, in its general application, is so seldom observed in the ordinary affairs of life. Agreements as to easements between private individuals are, of course, void where they infringe upon the rights of others or are injurious to the welfare of the community at large.—Ed.

struction; and where structures are being erected anew in many places the prohibition should be made in each one of them. It will be sufficient if it is made to the owner, or to the superintendent, or to the master-workmen, or to the laborers themselves when none of the above-mentioned persons happen to be present.

LAW II.

How a Prohibition Can Be Made When Several Persons Are Erecting a New Building Together, and When Several Others Consider Themselves Injured by It.

Several men sometimes begin to erect a new structure together, and the party who considers himself injured by it cannot find them all at once, when he desires to forbid them from proceeding with the structure. In a case of this kind we decree that it will be sufficient to address and notify one of them, in any of the ways we mentioned in the preceding law, and that the party has no reason to notify the others, if he does not wish to do so. But where several persons consider themselves injured on account of the aforesaid structure, and one forbids them in his own name to proceed further with it, a prohibition of this kind will not be sufficient, except so far as the party himself who gives the notice is concerned. Where, however, one forbids it in the name of all, then such notification will be sufficient and they must stop work, just as if each one of them, himself, forbade it, the party who makes such prohibition giving security that the others will confirm his act.

LAW III.

Every Man Can Forbid a House, or Other Structure to Be Erected in the Public Squares, or on the Commons of a Town.

Where a man begins to erect a new building on a square, or in a street or on a common belonging to any community, without permissioin of the king, or of the council on whose ground he does this; then any inhabitant of said town can forbid him to proceed with said building, except where the person who forbids this to be done is a minor under fourteen years of age, or a woman. The latter cannot make such a prohibition, although they can do so when any new structure is erected on his or her own property.

LAW IV.

A Party Who Has the Usufruct of Property Belonging to Another Person, Can Forbid Anything to Be Done on Said Property.

Where a man has the usufruct of a field, an orchard, or any other property belonging to another, and someone who is not the owner of said property begins the construction of a new building upon it, the party entitled to the usufruct can forbid him to perform any more labor on the same. He who holds property in pledge, or as a fief, or for quitrent, can do the same thing, but although he can make a prohibition of this kind to a stranger, he has no authority to do so to the owner of the land, he can, however, require him to make good all loss which may result to the usufruct by reason of the erection of said new structure and he will be obliged to do so.

LAW V.**A Party Entitled to a Servitude in the House or Land of Another, Can Forbid the Erection of New Structures Upon the Same.**

Servitudes are sometimes interfered with by new structures which men erect on the property where they exist. For which reason we decree that where a party who is entitled to a servitude in a house or any other building, considers himself injured by the erection of a new structure which may be an impediment to the enjoyment of said servitude, he can forbid its erection in any of the ways we mentioned above; but where the servitude is of such a character that it exists against one tract of land in favor of another, as, for instance, when it is a path, a road, a way, or a water-course, then the party entitled to said servitude cannot, in the way we mentioned above, forbid the erection of a new building which interferes with it. He can, however, appeal to the judge against those persons who ordered it to be constructed, and if he finds that they are doing this wrongfully he can order the building to be taken down, and direct the other party to be reimbursed for any damage or loss which he may have suffered on this account.

LAW VI.**Where the Party Notified Not to Erect a New Structure or Proceed with It, Sells It, He Should Inform the Purchaser of the Prohibition.**

Where a man constructs a new structure, and, after being in any of the ways mentioned above forbidden to proceed with it, conveys to another party the ground on which he built it, said notice will affect the purchaser just as much as the party who sold it. Wherefore the vendor should inform him that he was forbidden to proceed farther with said structure, and if he does not do so, he will be liable to the purchaser for all the damages and losses which he may suffer on this account. If, however, he gave him notice of this at the time when he sold it to him, and he, nevertheless, did not desist from proceeding with the work; and any injury results to him for this reason, he must endure it because it is due to his own fault, and he is not entitled to demand payment or reparation from the party who sold the property.

LAW VII.**No One Can Forbid the Erection of New Structures Made for the Purpose of Repairing or Cleaning Pipes, Roofs, and Other Things Which Men Need for Their Houses.**

Where a man repairs or cleans the pipes and gutters by which water is collected from his houses, or his lands, although one of his neighbors may consider himself injured by work of this kind on account of the annoyance experienced from some bad odor, or for the reason that stone, brick, earth, or other things necessary for the work were thrown into the street, or on the land of some person which was situated near said pipes; or where in opening trenches, he bridges the street with planks, or in some other manner, until he has completed the work; still, no one can be forbidden or hindered from building structures of this kind, because it is a great source of profit and protection to houses, and also a great benefit to the health of men to have pipes kept in good order and clean. For if this were not the case many houses might be ruined and demolished for this reason. Those, however, who perform labor of this kind should be careful to do it in such a manner that, when it is completed, no impediment will be placed in the way of anyone else, or he be deprived of any of his rights on this account, and that the land will be restored to the same condition in which it was formerly.

LAW VIII.**What Force a Prohibition Made Against the Erection of a New Structure Has.**

A prohibition made in any of the three ways we mentioned above should be observed, whether the notice be given to the owner of the structure, to his foremen, or to the superintendent, to the effect that no work should afterwards be done where the new structure is in course of erection without the order of the judge of that district. A prohibition of this kind has great force, whether it is made justly or not, so that if the party who is erecting the structure proves obstinate, and is not willing to stop work after he has been forbidden to proceed, then the judge should cause everything that he builds after this to be demolished at the cost and expense of the party who ordered the labor to be performed.

LAW IX.**What a Judge Must Do When a Suit to Prevent the Erection of a New Structure Comes Before Him.**

Men forbid and prevent the erection of new structures in any of the ways we have mentioned above, and afterwards both parties appear before the judge on account of this. Wherefore we decree that the judge shall take the oath of the party who forbids the erection of the structure, causing him to swear that he does not act maliciously but because he thinks that he has the right to do so, since he who is constructing the new structure is doing this on his ground, or to his injury. If he is not willing to take this oath, the judge should grant permission to the other party to continue the construction of the structure which he has commenced, and order the complainant not to hinder him. If he consents to take said oath, the judge should receive it, and hear what each party has to allege and prove, and, in the meantime, the structure should remain in the same condition, for the space of three months. Where it is not found possible to decide the case in this time, the judge can then grant the party permission to continue the work, and should take from him good sureties in the following way, namely; if it should appear that he was not lawfully entitled to do said work, for the reason that he had no right in the place where he was doing it, that he will demolish the edifice at his own expense, and afterwards he should grant him authority to build. We also decree that if the party desires to give such security before the said three months have elapsed, he who stopped the work will not be bound to accept it. If, however, he does accept it before he appears before the court, or if, without the security, he grants the other party authority to build after he has forbidden him, the owner of the structure has a right to proceed with the work which he has begun.

LAW X.**New, or Old Structures Which Are in Danger of Falling Down Should Be Repaired, or Demolished.**

New structures sometimes crack by reason of the giving away of their foundations, or because they are improperly built, or on account of the weakness of the structure itself; and, moreover, old structures decay and are in danger of falling down through age, and the neighbors who live near them become apprehensive of receiving injury from this source. In a case of this kind we decree that the judge of the district can, and should, order the owners of said buildings either to repair, or demolish them. In order that he may be the better able to do this, he, himself, should take good master-workmen and those who are learned in this trade, and visit the place where said buildings of which

the neighbors are afraid are situated, and if he sees or thinks, from what said master-workmen tell him, that said buildings are in such bad condition that they cannot be repaired, or finds that their owners are unwilling to repair them, and that they are liable to fall down and cause damage, he can then order them to be demolished. Where they are not in so bad a condition as this, the owners should be compelled to repair them, and give good sureties to the neighbors that no damage will result to them from this source.

Where they refuse to give such security, and prove disobedient, and are obstinate and unwilling to make said repairs, the neighbors who filed the complaint should be placed in possession of said buildings which are in danger of falling; and if their owners persist in their obstinacy, the said neighbors should retain the buildings until the time that they can be repaired or demolished by order of court. Moreover, we decree that where the owner of a building gives security to the neighbors who are afraid of it, to pay them all damages they may suffer on account of the same, and the building falls down because of its own weakness and not through accident; the party will then be bound to pay the damages for which he obligated himself. But where the building was destroyed by an earthquake, or by lightning, or by a hurricane, or by a water-course, or accidentally, in any other way like this, the party will not then be required to pay the damage caused by it.

LAW XI.

Where a Building of One Party Falls Upon That of Another, the First Party Is Not Bound to Pay the Damage Resulting from This Before a Complaint Is Made in Court.

Where a building of one party falls upon that of another, before a complaint of it has been made before a judge, although it may cause damage the owner will not be required to pay it. Where, however, he wishes to remove the tiles, the wood, and the brick, which fell upon the house or the ground of his neighbor, and leaves the residue and the dirt, he cannot do so; for he must remove everything that fell at his own cost and expense, and leave all in good condition on the premises of the party who received the injury.

LAW XII.

Walls Can Be Demolished and Trees Cut Down, Where Persons Are Afraid of Injury If They Should Fall Upon Their Walls.

Walls of weak construction, and large trees which are insecurely rooted, sometimes stand near the lands or houses of others, so that the neighbors fear that they will sustain injury if they should fall. Wherefore we decree that when a complaint of this kind comes before a judge, he should select some good men who are skilled in such matters, and ascertain whether the said walls and trees are so insecure that they may easily fall and produce damage; and where this is found to be true, he should order them to be cut down, and demolished.

LAW XIII.

Gutters, Which Men Place on Their Houses to Carry Away the Water, Can Be Destroyed When the Neighbors Are Damaged by Them; and So Can Obstructions by Means of Which Water Is Prevented from Traversing Courses Where It Formerly Flowed Through Land.

Men sometimes erect strong structures on their own property, and although they are of such a kind that the neighbors do not fear they may fall, nevertheless, they may suffer injury and annoyance from them in another way. This would be the case where a party erects a tower, or some other building, and collects rain water by means of gutters, causing said gutters to so project that the water falls upon the roofs of his neighbors. For which reason we decree that when a complaint of this kind, or any other similar to it, is brought before a judge, he must compel the party to change and remove his gutters, so that those who made the complaint may not suffer damage. Moreover, we decree that where a party builds a wall, a fence, a palisade, or any other structure on his land, so that the water cannot run in the same place it was accustomed to, and a pond is made there from which injury may result to the property of his neighbors; or where anyone erects a structure in the place where water used to flow, and because of this, its course is changed, and it falls from such a height that it makes holes or channels in the property of his neighbor; or obstructs the current, or diverts the stream so that others who are accustomed to make use of it, cannot irrigate their lands by it, as they were formerly accustomed to do; any of the aforesaid structures, or any others similar to them recently made by any person, from which injury may result to the lands of his neighbors, shall be demolished at his cost and expense, and the land restored to its former condition; and, also, the party who built the structure shall pay all damages and losses suffered by his neighbors on account of the same. For the wise men of the ancients declared that although a man has the power to do with his own property whatever he wishes, nevertheless, he should act in such a way as not to cause injury or wrong to another.¹

LAW XIV.

For What Reasons When Some Lands Are Injured by Others, the Owners of the Latter Are Not Obligated to Pay for Such Injury.

There are three ways in which men can sustain injury from the lands of others which they are compelled to endure and cannot justly complain of their owners. The first of these has a natural cause, as where one man's property is situated below that of another. For although water may run from higher land upon that which is lower, or stones or earth may come down through the agency of the water, or from any other cause—provided this is not effected maliciously by the hand of man—and damage is caused by it, the party owning the higher land is not at fault, nor will he be required to pay for said damage. The second is where injury results from work done at former times; for though the party who owns the property below may be damaged in some way by the other on which the ancient structure is situated, if ten years have elapsed since said structure was built, and the party whose land is injured has been on the premises during that time and did not manifest any opposition; or where twenty years have passed, and he has been absent, he must endure said injury, and he cannot afterwards complain of it. The third is where damage results from a servitude which exists in favor of certain land against some other, for

¹ See note to Law I, *supra*.

although the owner may suffer injury in his property on account of the servitude imposed upon it, he cannot, for this reason, complain of the party who owns the land to which said servitude attaches.

LAW XV.

What a Party Should Do on Whose Land the Current Is Obstructed by Stones, Tree Trunks, or Sand Brought Down by the Water.

Where a stream runs through the property of several persons, although none of them may have done anything to obstruct its current but the water does this naturally, of itself, by bringing down trunks of trees, mud, stones, or anything else whatsoever, a little at a time, so that the channel is cut off, and the water removed from the place where it formerly flowed; and any neighbor considers himself injured, or as sustaining loss by reason of such obstruction, he can compel the party on whose property the water caused it to do one of two things; either to clean, or open the channel through which the water formerly ran and cause it to resume its accustomed course, or to permit him to do so; and the owner of said property is obliged to do one of these two things, whether he is willing or not. Where, however, the place where the water is obstructed is a canal belonging to several persons, every one on the boundary of said land is required to assist in restoring the channel, so that the water may flow as it was accustomed to do and they can make use of it.

LAW XVI.

A Structure Erected to the Injury of Another Person Must Be Demolished, Even Though the Land on Which It Was Built, or the Other Property Which Suffered the Injury, May Subsequently Be Disposed of.

Where a man builds anything on his premises by means of which water is cut off or obstructed where it was formerly accustomed to flow through said premises, and another party who has land adjoining it suffers injury or loss through said structure, and he who suffered said injury sells said property to some other party, before a demand was made upon him to demolish said structure; we decree that the purchaser of said land can bring suit for the purpose of having said structure demolished, except where the party who erected it acquires a right to the same through lapse of time. Moreover, we decree that where the party who erected said structure sells the land on which he built it before a demand was made upon him in court to remove the same, the purchaser can be compelled to permit those who were damaged by it to demolish it, or do so himself; and he cannot avoid doing this, although he may allege that he is not to blame for not acting. The expense incurred by the purchaser in demolishing said structure can, however, afterwards be demanded of the grantor, and he will be required to pay it, although he may not desire to do so.

LAW XVII.

Where Several Persons Build Something New Which Causes Damage to Another Party, a Demand Can Be Made Upon Each One of Them to Remove It.

Where several persons build something new by means of which the water which any man has a right to use is cut off or lost, he can make a demand upon each one of them or upon all of them together, whichever he prefers, to remove whatever they have built; although he cannot demand of each one reparation for the loss and damage which he sustained by reason of said structure, but

only the share of the same for which each one is liable. Moreover, we decree that where the structure they erected caused injury to several persons, each one of them in behalf of all can demand that it be removed; but each of them cannot demand reparation for the damage or loss of the others, without a power of attorney from them, and can only demand what he alone is entitled to as his share.

LAW XVIII.

One Mill Can Be Built Near Another Where It Does Not Remove the Water from It, or Interfere With It in This Respect.

Where a man has a mill in which flour is ground, or a machine propelled by water power for the purpose of beating cloths, and any other person desires to build another mill or machine in the same stream, near the former, he can do so on his own land, or on ground belonging to the king with the consent of the latter, or with that of the council which owns the ground where he wishes to do this. The work should, however, be performed in such a way that the course of the water will not interfere with the other mill, but that the party may freely have it as it was formerly accustomed to run; and where he does this in this manner, the other party cannot forbid, or prevent him from doing it; although he may allege that his mill will produce less income on account of the one that has been recently constructed. The same course should be pursued in the case of a newly built oven.

LAW XIX.

A Man Can Open a New Well, or Spring on His Own Land.

Where a man has a spring or well on his premises, and a neighbor desires to dig another on his own to obtain water and make use of it, he can do so and the other party cannot prevent him, although on this account the water of his spring or well may be diminished in quantity; except where the party who desires to do this has no need of it, but was impelled by malice to injure or defraud the other party, with the intention of cutting off, or diminishing the amount of water in the veins by which his well or spring was supplied under these circumstances he can forbid him to do this, and where he has already done it he can be compelled to destroy or close up the openings which he has made, for wise men have stated that neither the laws nor kings should suffer or overlook the wickedness of man, but should, on the other hand, always oppose it.

LAW XX.

The Castles and Walls of Towns and Other Fortified Places, Along With Their Sidewalks, Fountains, and Gutters, Should Be Kept Up and Repaired.

It is a mark of the good order and nobility of a kingdom to keep up the castles and walls of cities and other fortified places, and the sidewalks, bridges, and gutters of towns, so that they may not be demolished, or fall into decay; and although the benefit of these structures belong to all persons in common, nevertheless, the protection and care of buildings of this kind are a part of the duties of the king; and therefore he should appoint men of distinction who are familiar with such matters as well as diligent, who will faithfully make the repairs which are necessary for the public works above mentioned; and we also decree that he must furnish these men whatever they require for the accomplishment of their task. Where, however, any work of this kind is nec-

essary in cities or towns, and they have revenues separate from that of the community, these ought to be first expended for this purpose, and if they should not prove sufficient, or there should not be any property held in common, then the residents of the community should pay the expense, each one in proportion to his means, until a sufficient sum is obtained for the completion of the work; and neither knights, priests, widows, minors, nor any other persons whosoever, no matter what exemptions they may enjoy, can avoid such contributions; for, since all in common are benefited by works of this kind, it is but proper and just that every person furnish such assistance to them as it is in his power to do.

LAW XXI.

What Penalty Those Deserve Who Are Appointed to Superintend Public Works, When They Are Guilty of Deceit With Regard to Them.

Those who are appointed to superintend public works should faithfully and zealously see that they are carried out so that no fraud may result through their guilt or negligence, and if they do this, they will be responsible to the king in person, and in all the property which they possess. Where a newly erected structure was demolished or displaced before it was finished, or within fifteen years after it has been built, the wise men of the ancients presumed that this accident occurred through the neglect, guilt, or deception of those who were appointed to build it. For this reason they and their heirs are bound to rebuild said structure at their own cost and expense, except where it was accidentally destroyed, as, for instance, by an earthquake, by lightning, or by a great inundation of a river or a watercourse, or through some other serious accident of this description.

LAW XXII.

No House, or Any Other Building Should Be Erected Near the Walls of Cities or Castles.

The streets near the walls of towns, cities, and castles should be free from obstacles and clear, and no one should erect a house there which may obstruct them or rest against them. Where anyone desires to build a new house there, he should leave a space of fifteen feet between the house which he builds and the wall of the town or castle. The wise men of the ancients considered this to be proper, for two reasons; first, in order that men might assemble without hindrance, and defend the walls of the town in time of war; second, lest by the connection of houses with the town or castle injury or treason might result.

LAW XXIII.

Neither a House, Nor Any Other Building Should Be Erected Upon the Squares, Streets, or Commons of Towns.

No man should build a house, or any other edifice or structure upon the squares, commons, or streets, which are the property of cities and towns or other communities; for places of this kind, which have been left for the convenience and common benefit of all who resort there, should not be appropriated or cultivated by any person for his own benefit. When anyone acts contrary to this rule, whatever he has built there should be torn down and destroyed. Where the Council of the community where this has been done agrees to retain said building for its own use, and does not desire it to be demolished, it can do so; and the income derived therefrom should be used by it just as the other common revenues which it receives.

We also decree that no man who erects a structure in a place like those aforesaid, can, or should protect himself by alleging that he has gained the right to do so by lapse of time.

LAW XXIV.

Neither Houses, Towers, Nor Other Buildings Should Be Erected Near a Church.

All men, in common, make use of churches by praying to God in them to pardon their sins, and for this reason, just as houses, shops, or any other edifices should not be built against the walls of castles, and towns, so also because a church is a holy House of God, no one should build shops for the sale of merchandise, or for any other purpose—except such as appertain to works of piety and mercy—around it; and where any structure of this kind is erected, it should be removed from thence. Moreover, we decree that those who have charge of churches shall keep them up and repair them, so that they may not decay or be demolished.

LAW XXV.

Every Man Is Required to Repair and Keep Up His House or Any Other Building Belonging to Him, but He Is Not Bound to Construct a New One, Except in Particular Instances.

Any man who owns a castle, tower, or any other building whatsoever in a town or any other inhabited neighborhood, should keep it up and repair it, so that it may not be demolished through his fault or negligence; but he is not required to rebuild it unless he desires to do so, except where he consents, or enters into a contract or agreement to build a house, or a tower in some place, or inherits the property of someone who directed him to do so; for, in this case, he will be bound to comply with the contract which he entered into, or with the order of the testator.

We also decree that where anyone wishes to rebuild a house or tower on his own premises he can do so, leaving as wide a space of ground towards the street as his neighbors in that locality are accustomed to do, and he can raise his building as high as he desires, always being careful not to expose the houses of his neighbors much to view.¹

LAW XXVI.

He Who Repairs a House or a Building, Which He Owns in Common With Other Parties, Is Entitled to Recover His Expenses, or to Obtain the Shares of the Others.

Where several persons have shares together in a tower, a house, or any other building whatsoever, and it is in such bad condition that it is in danger of falling down and one of the owners orders labor and repairs to be made upon it out of his own property, and in the name of himself and his associates,

¹ This provision coincides with the ancient regulation of both the civil and the common law. "*Cum eo, qui tollendo obscurat vicini aedes, quibus non serviat, nulla competit actio.*" (Corp. Jur. Civ. Dig. VIII-II-9.) The same doctrine prevails in England, where in theory, at least, a man can construct his building to an indefinite distance upward or downward. "*Cujus est solum ejus est usque ad coelum; et ad inferos.*" (Coke. Inst. IV.) Both of these maxims are, however, modified by the one promulgated by Justinian which prohibits the erection of buildings which may interfere with the enjoyment of his rights by a neighbor. "*Aedificare in tuo proprio solo non licet quod alteri noceat.*" (Corp. Jur. Civ. Inst. III-201.) The original rule was subjected to frequent limitations during the Empire, and had been investigated and was perhaps changed in the time of the Republic, as indicated by the work of Rutilius; "*De Modo Aedificiorum.*" The height of buildings was restricted by Augustus to seventy feet, and by Trajan to sixty. Subsequent laws forbade the owner to raise or rebuild his house to a greater altitude than it had formerly reached, except where an agreement permitting this existed, or the right had been acquired by prescription.—Ed.

notifying them of this in the first place; all of them are liable, each for his share, to reimburse the said party for the expenses which he incurred for the benefit of said property. This should be done within four months from the day when the work was finished, and the demand was made upon them for payment for the same. When it is not done the parties forfeit the shares which they had in the property on which the labor was performed, and he who repaired said building with his own money is entitled to them. But where the party who did the work acted in bad faith and did not notify his associates, but repaired the property which he held in common with the others, or built any new structure in his own name, as if the whole of it belonged to him; he shall in this case, lose the expenses which he incurred by said work, and anything new which he built will belong in common to all the parties interested.

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